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TAB 1

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<p>1 IN THE UNITED STATES DISTRICT COURT 2 IN AND FOR THE DISTRICT OF DELAWARE 3 4 MONA DOBRICH and MARCO DOBRICH, individually; 5 As parents and next friend of ALEXANDER DOBRICH, 6 SAMANTHA DOBRICH, JANE DOE and JOHN DOE, 7 individually and as parents and next friend of 8 JORDAN DOE and JAMIE DOE, 9 Plaintiffs 10 vs. CIVIL ACTION 11 NO. 15-120 12 INDIAN RIVER SCHOOL DISTRICT, ET AL., 13 Defendants 14 15 DEPOSITION OF CHARLES M. BIRELEY, taken 16 pursuant to notice at the Indian River School 17 District, 31 Hosier Street, Selbyville, Delaware, 18 beginning at 9:15 a.m. on October 11, 2006 before 19 David A. Sroka, Registered Professional Reporter and 20 Notary Public. 21 APPEARANCES: 22 THOMAS ALLINGHAM, ESQUIRE 23 RICHARD HORVATH, ESQUIRE 24 BRIAN LENHARD, ESQUIRE P.O. Box 636 Wilmington, Delaware 19899-0636 For the Plaintiffs WILCOX & FETZER 1330 King Street - Wilmington, DE 19801 (302) 655-0477 www.wilfet.com</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>1 MS. DUPHILY: This is the 2 videotape deposition of Mr. Charles 3 Bireley, taken by the Plaintiffs in the 4 matter of Dobrich, et.al, versus Indian 5 River School District, et.al, case 6 number 15-120. 7 The deposition is being held at 31 8 Hosier Boulevard, Selbyville, Delaware. We 9 are going on the record on October 11, 2006 10 at approximately 9:15 a.m.. The court 11 reporter is Dave Sroka from the firm of 12 Wilcox & Fetzer. I am Lindsay duPhilly, 13 videotape specialist from Discovery Video 14 Services. 15 Now, the counsel will introduce 16 themselves and then the court reporter will 17 swear in the witness. 18 MR. ALLINGHAM: Tom Allingham 19 representing the Plaintiffs and with me is 20 Rick Horvath and Brian Lenhard. 21 MR. GOSSELIN: Jason Gosselin 22 representing the Indian River School 23 District, the school board and the other 24 defendants.</p> <p>3</p>
<p>1 2 3 4 JASON P. GOSSELIN, ESQUIRE 5 Drinker Biddle & Reath LLP 6 Philadelphia, Pennsylvania 19103-6996 7 For the Defendants 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>2</p>	<p>1 CHARLES BIRELEY, 2 The Witness herein, called for examination by 3 the Plaintiffs, having been duly sworn to tell the 4 truth, the whole truth, and nothing but the truth, 5 was examined and testified as follows: 6 examination by him to. 7 EXAMINATION BY MR. ALLINGHAM: 8 Q. Good morning, Mr. Bireley, my name is Tom 9 Allingham, I represent the Plaintiffs. I'm going to 10 ask you questions today that are relevant in our 11 view to the School Board prayer issue in this 12 litigation. 13 We have, as your lawyer has probably told 14 you separated, or the judge has asked us to separate 15 the School Board prior issue from the several other 16 issues in the case, and so the deposition today will 17 be focused on the School Board prayer issue. 18 A couple pieces of introduction. I'm going 19 to refer to the final board policy on School Board 20 prayer, a copy of which I'll give you later and we 21 will talk about it, as the School Board Prayer 22 Policy. Do you understand what I mean when I say 23 that? 24 A. Yes.</p> <p>4</p>

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1 followed.
 2 Q. You answered my question about your opinion
 3 about the School Board being a legislative board by
 4 comparing the School Board to the General Assembly,
 5 correct?
 6 A. Yes.
 7 Q. Let me ask a couple of more questions. The
 8 General Assembly doesn't approve field trips, does
 9 it?
 10 MR. GOSSELIN: Objection.
 11 A. No.
 12 Q. More generally in our -- in the structure
 13 of our government, is the General Assembly
 14 responsible for enforcing and administering the
 15 policies that it sets, the laws that it passes?
 16 MR. GOSSELIN: Objection.
 17 A. Ask me the question again please, if you
 18 would?
 19 Q. Sure. In our government in the State of
 20 Delaware is the General Assembly responsible for the
 21 administration and enforcement of the statutes and
 22 laws that it passes?
 23 MR. GOSSELIN: Objection.
 24 A. Not that I'm aware of.

21

1 Q. Do you know what the process would be for
 2 disciplining a School Board who violated a School
 3 Board policy?
 4 A. Never had the issue to do it, but I would
 5 assume that we would come before the rest of the
 6 Board members and we would discuss it.
 7 Q. Fair enough. So, you are not aware of a
 8 specific policy that sets that process but that as
 9 for example as Board president is what you
 10 anticipate what would happen?
 11 A. Yes.
 12 Q. I asked you some general questions about
 13 student attendance at school Board meetings and I
 14 want to ask some more specific questions. The
 15 minutes of the meetings reflect a presentation of
 16 the colors at virtually every meeting, is that
 17 consistent with your recollection?
 18 A. Yes, except during the summer months.
 19 Q. Summer months being when the kids are out
 20 of school?
 21 A. Yes.
 22 Q. So during the academic school year
 23 September to June you would have presentation of
 24 colors?

23

1 Q. You on the other hand as a School Board
 2 mention are responsible for the enforcement and
 3 administration of the policies that you pass, isn't
 4 that right?
 5 A. Yes.
 6 Q. Let me ask you this, on a percentage basis
 7 over the 30 years of your service as a Board member
 8 what percentage of your time at public meetings has
 9 been spent in the consideration of policies and what
 10 percentage of time has been spent on other areas of
 11 responsibility?
 12 A. We have a committee that gives us a report
 13 each Board meeting on policy. If there are some to
 14 adopt I'd say maybe just a range of 15 to 20, 25
 15 minutes a meeting.
 16 Q. On policy?
 17 A. Yes.
 18 Q. And the remainder on non-policy issues?
 19 A. Yes.
 20 Q. In the course of your tenure as a School
 21 Board member are you aware of any instance in which
 22 a School Board member has been accused of violating
 23 or failing to comply with a Board policy?
 24 A. Not that I'm aware of.

22

1 A. Yes.
 2 Q. And the colors are presented by the student
 3 ROTC groups from the two high schools in the
 4 district?
 5 A. Yes.
 6 Q. Who invites them to do that or do they just
 7 know that they are suppose to show up?
 8 A. I believe it's the building principal.
 9 Q. Building principal of the school in which
 10 you're meeting?
 11 A. Yes.
 12 Q. So, if you were at during the construction
 13 projects a couple of years ago, if you were at the
 14 elementary school the principal of the elementary
 15 school would invites the ROTC?
 16 A. No.
 17 Q. I misunderstood you then, who would invite
 18 them?
 19 A. Well, right how it's because we have two
 20 high schools and that's where the ROTC and it would
 21 be the principals of the two high schools.
 22 Q. So, if you are meeting at Indian River High
 23 School the Indian River principal remind the ROTC
 24 group to show up for the Board meeting?

24

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1 A. That's probably true.
 2 Q. I can now eliminate several pages of my
 3 outline. Are there instances in which students are
 4 required to attend Board meetings?
 5 A. Not that I'm aware of.
 6 Q. Are you aware of any instance in which a
 7 student who isn't confronted with a scheduling
 8 conflict has declined an invitation to attend School
 9 Board meetings?
 10 A. Can you repeat the question?
 11 Q. Yes. Setting aside instances in which
 12 student has a scheduling conflict and can't come,
 13 are you aware of any instance in which a student has
 14 declined an invitation to attend School Board
 15 meetings?
 16 A. Not that I'm aware of.
 17 Q. Is it your expectation as a Board member
 18 that students would view an invitation from the
 19 School Board as an attractive invitation for
 20 recognition of their achievements?
 21 MR. GOSSELIN: Objection.
 22 Q. You can answer.
 23 A. My opinion it would be, it's an honor for
 24 them to come to receive an award.

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1 A. Yes, it's probably been going on longer
 2 than the awards issue that she recommended that we
 3 do.
 4 Q. Do you have any recollection of when it
 5 began?
 6 A. No, I'm not sure.
 7 Q. I'm going to mark as exhibit, Plaintiff's
 8 Exhibit 32 a document bearing Bates number, I should
 9 have told you, Bates numbers you will see on the
 10 bottom of most of the documents I give you, there is
 11 a little printed number. Some guy named Bates
 12 invented this system. So, we identify them on the
 13 record by Bates numbers so people reading the
 14 transcript know what we are talking about.
 15 So, this is a document titled Minutes of
 16 the Board of Education Special Meeting on July 19,
 17 1994, it's bearing Bates numbers PR206 through 210.
 18 (WHEREUPON, Plaintiff's Exhibit 32
 19 was marked for identification)
 20 MR. ALLINGHAM: I can't remember
 21 if I told you Jason we decided last night
 22 we are going to sequentially number and
 23 call them Plaintiff's Exhibits so that we
 24 don't -- I never know which is the better

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1 Q. Yes, sir, and in fact isn't that
 2 essentially what Mrs. Hobbs said back in the mid
 3 '90s when she said we ought to be honoring our
 4 students?
 5 A. Yes.
 6 Q. Okay, we identified the ROTC, and we
 7 identified student who come to the Board meetings to
 8 receive awards or recognition, is it also the case
 9 that student government representatives address the
 10 Board regularly?
 11 A. During the time of the school year, yes.
 12 Q. Yes, sir, and in fact there is now a
 13 section, regular section of the agenda called
 14 student government which is intended to provide the
 15 student government representatives with an
 16 opportunity to address the Board, is that correct?
 17 A. Yes.
 18 Q. And that practice was established back in
 19 it 1999s, is that correct?
 20 A. That was one of the things that was done by
 21 a Board member who made the suggestion, it wasn't
 22 done by Mrs. Hobbs.
 23 Q. No, sir, I didn't suggest that it was
 24 separate from the award issue.

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1 way, but that's how we are going to do it.
 2 MR. GOSSELIN: I prefer -- well,
 3 you don't care what I prefer. This is
 4 fine, this is what I prefer.
 5 MR. ALLINGHAM: I feel better
 6 then.
 7 Q. None of this is a memory test, sir. If you
 8 look at page four of the document Plaintiff's
 9 Exhibit 32, under student government which is the
 10 third heading, you will see that Mr. Cohee reports
 11 on a meeting he had at Sussex Central with some
 12 students who talked about a lack of communication
 13 and the inactive student government, and Mr. Cohee
 14 then made a motion, according to the minutes that
 15 you seconded, to include on the agenda a ten minute
 16 segment for student government for both high schools
 17 and the motion passed unanimously.
 18 Does that refresh your recollection that it
 19 was in 1994 that that agenda item was added?
 20 A. I wasn't sure of the date that it was done,
 21 but I know Mr. Cohee is the one who brought it.
 22 Q. And looking at these minutes does that
 23 refresh your recollection that it was 1994?
 24 A. This says July 19, 1994.

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1 responsibilities as a Board member seriously, don't
2 you?

3 A. Yes.

4 Q. And is it your sense that your fellow Board
5 members also take their responsibilities seriously?

6 A. Yes.

7 Q. Have you ever had a sense that your
8 colleagues on the Board were not trying their best
9 to discharge their responsibilities as Board
10 members?

11 A. No.

12 Q. So, this will sound like a summary
13 question, and it is, in your 30 years or so of
14 service on the Board you have throughout those 30
15 years of service you have been confident that your
16 fellow Board members are using their best efforts to
17 discharge their Board responsibilities
18 appropriately?

19 A. To the west of my knowledge?

20 Q. Yeah.

21 A. Yes.

22 Q. Do student government representatives from
23 time to time express concerns to the Board about
24 issues in their schools?

41

1 A. Most of the time during the month of
2 December a group would come in to perform either
3 singing or a small acting type thing. The Odyssey
4 of the Mind students have come in and did their
5 little skit that they did in national in front of
6 the Board.

7 Q. It SDSA Steel Band, that's a musical group?

8 A. Yes.

9 Q. Is that one of the December performances?

10 A. They came I'm not sure whether it was
11 December, but we have had them there, yes.

12 Q. What is the Odyssey of the Mind?

13 A. It's a group of student that are elevated
14 students, you know the better students that through
15 creativity they do skits or they do like a play or
16 something like that that they go to state and
17 national competition and be judged with other school
18 districts.

19 Q. And so they came and sort of made their
20 presentation to the Board?

21 A. Yes.

22 Q. I noticed in some of the older minutes
23 there were band groups that had done national
24 competitions and then had performances for the

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1 A. Yes.

2 Q. Give me an example of some concerns that
3 they've expressed?

4 A. The period of time that Sussex Central was
5 going through their construction and they actually
6 were placed in a building maybe a year ahead of time
7 they shouldn't have been there, and it was -- well
8 basically it was not a very good experiences for
9 them. We heard some of that type of thing.

10 Q. It's a legitimate concern?

11 A. Yes.

12 Q. Any other that you can think of?

13 A. Not that I can remember.

14 Q. Do student groups sometimes attend Board
15 meetings?

16 A. Yes.

17 Q. Can you give me some examples?

18 A. Well, I consider it to be a group when the
19 come in to get their awards if that's what you mean.

20 Q. No, I meant you know musical groups or I
21 guess the ROTC would qualify as a group, some group
22 that attends Board meetings as a group?

23 A. Yes.

24 Q. Can you give me some examples?

42

1 Board, do you recall that?

2 A. At a Board meeting?

3 Q. Yes.

4 A. No, I really don't.

5 Q. The student groups that attend the School
6 Board meetings who invites them?

7 A. The students?

8 Q. The student groups like the steel band or
9 the musical groups or ROTC, who invites them?

10 A. The superintendent.

11 Q. Is that done by a letter to the groups?

12 A. I'm not sure.

13 Q. Okay. In one of the minutes, and I don't
14 have it here, so if you don't remember it's not a
15 big deal, but do you recall a student representative
16 addressing the Board with concerns about the quality
17 of the water and quality of the athletic fields at
18 Sussex Central?

19 A. Yes.

20 Q. Was it helpful to the Board to get student
21 input on issues like that?

22 A. Yes.

23 Q. How did the School Board respond to those
24 concerns?

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<p>1 A. We tried to make them better.</p> <p>2 Q. The student government representative</p> <p>3 portion of the agenda is limited to the two high</p> <p>4 school, is that right?</p> <p>5 A. Yes.</p> <p>6 Q. Are there instances in which other</p> <p>7 representatives of student bodies express concerns</p> <p>8 about conditions at their schools, that is a other</p> <p>9 than the high schools?</p> <p>10 A. I can't remember.</p> <p>11 Q. Do you recall in August of 2004 a</p> <p>12 Selbyville middle school student expressing a</p> <p>13 concern about the loss of safety and school climate</p> <p>14 positions?</p> <p>15 A. Oh, yes.</p> <p>16 Q. Do you recall students speaking to the</p> <p>17 Board about concerns about the Southern Delaware</p> <p>18 Schools of the Arts?</p> <p>19 A. Yes.</p> <p>20 Q. And in each of these cases where students</p> <p>21 come to the Board to address their concerns, does</p> <p>22 the Board benefit from the attendance of the</p> <p>23 students and expression of their concerns?</p> <p>24 A. Do they benefit?</p> <p style="text-align: center;">45</p>	<p>1 they come to that.</p> <p>2 Q. Oh, I see so there is that limitation in</p> <p>3 the public comment session where you can't speak</p> <p>4 about personnel issues, but there is a way for a</p> <p>5 member of the public to speak to the Board about</p> <p>6 personnel issues?</p> <p>7 A. Yes.</p> <p>8 Q. By making an application to speak at an</p> <p>9 executive session?</p> <p>10 A. Yes.</p> <p>11 Q. How do members of the public -- how can</p> <p>12 members of the public find out about that avenue for</p> <p>13 expressing their concerns to the executive session?</p> <p>14 A. They can contact the superintendent.</p> <p>15 Q. It's not posted that you can do that</p> <p>16 anywhere on the web site or in the policies?</p> <p>17 A. I'm not sure.</p> <p>18 Q. How would students find out about the</p> <p>19 possibility of speaking to executive session?</p> <p>20 A. It's like a chain of command. If they have</p> <p>21 an issue they can go to the building principal</p> <p>22 first. Then they can go to the superintendent and</p> <p>23 the superintendent would make them aware that no you</p> <p>24 cannot stand up in front of the Board meeting and</p> <p style="text-align: center;">47</p>
<p>1 Q. Yes. Is it helpful to the Board?</p> <p>2 A. Yes.</p> <p>3 Q. And in case does the Board try to address</p> <p>4 the concerns of the students?</p> <p>5 A. Yes.</p> <p>6 Q. Is there any other forum for the students</p> <p>7 to address the Board other than the public School</p> <p>8 Board meeting?</p> <p>9 A. Yes.</p> <p>10 Q. What is that?</p> <p>11 A. They can come in executive session.</p> <p>12 Q. Would that be by invitation of the Board</p> <p>13 itself?</p> <p>14 A. They apply, they write a letter and tell us</p> <p>15 that they have something that they want to talk</p> <p>16 about which is usual a personnel issue and we allow</p> <p>17 them to come.</p> <p>18 Q. And that has happened in the past?</p> <p>19 A. Yes.</p> <p>20 Q. How frequently?</p> <p>21 A. Rarely, but we do allow it. The same way</p> <p>22 that we allow a person in the community to do the</p> <p>23 same thing if it's a personnel issue something that</p> <p>24 we are not allowed to discuss during an open session</p> <p style="text-align: center;">46</p>	<p>1 talk about this particular issue, however, if you</p> <p>2 want to do it in executive session then they would</p> <p>3 be told that they can do it in executive session.</p> <p>4 Q. So, the superintendent would let them know</p> <p>5 which way they could go?</p> <p>6 A. Yes.</p> <p>7 Q. Apart from speaking to the board at public</p> <p>8 sessions, or speaking to the Board in executive</p> <p>9 session, is there any other way that students have</p> <p>10 the ability to speak directly to the School Board?</p> <p>11 A. Other than just maybe seeing us out</p> <p>12 somewhere and they make a comment individually.</p> <p>13 Q. No other official way to speak to the</p> <p>14 School Board?</p> <p>15 A. Not that I'm aware of.</p> <p>16 Q. It always warms witness' hearts when I</p> <p>17 start skipping through and I have a long red line on</p> <p>18 the outline.</p> <p>19 MS. ALLINGHAM: Miss duPhily has</p> <p>20 told me we have about four minutes of tape</p> <p>21 left, we are going to change the tape now,</p> <p>22 just take a minute.</p> <p>23 MS. DUPHILY: Going off the record</p> <p>24 at approximately 10:10 a.m..</p> <p style="text-align: center;">48</p>

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<p>1 Q. So, to the best of your recollection at 2 every Board meeting during your service as a Board 3 member the School Board opened the meeting with a 4 prayer? 5 A. To the best of my knowledge. 6 Q. Who decided, and this is all prior to the 7 more recent adoption of the School Board Prayer 8 Policy, who decided which Board member would lead 9 the group in prayer or offer a prayer? 10 A. The Board president. 11 Q. How was it decided which School Board 12 member would open the meeting with a prayer? 13 A. The Board president just asked someone, I 14 don't know how. 15 Q. Were there any restriction of any kind on 16 what sort of prayer a School Board member could 17 over? 18 A. Not that I'm aware of. 19 Q. Prior to the adoption of Policy BDA.1, 20 which is the School Board Prayer Policy in October 21 of 2004, was there any policy that governed the 22 offering of prayer at School Board meetings? 23 A. Not that I'm aware of. 24 Q. Were you ever asked to lead the Board in</p> <p style="text-align: center;">57</p>	<p>1 who would be invited to offer the prayer? 2 A. It was usually done by a small portion of 3 the group of ten. 4 Q. And did they have any common 5 characteristics, the small portion? 6 A. Not that I'm aware of. 7 Q. Do you know how that small group, smaller 8 group was identified by the Board? 9 A. To my knowledge the Board president would 10 call on someone at the Board meeting to say the 11 prayer, that's all I know. 12 Q. But you told me that a small group of the 13 Board was asked to offer the prayer, a group that 14 you were not a member of, do you know how that group 15 was identified or picked or selected to be the ones 16 who would offer the prayer? 17 A. No. 18 Q. How small a group, two, three? 19 A. Three, four, somewhere in that 20 neighborhood. 21 Q. Was a Jewish Board member ever included in 22 that group? 23 A. I don't recall us ever having a Jewish 24 Board member.</p> <p style="text-align: center;">59</p>
<p>1 prayer or offer a prayer at the beginning of School 2 Board meetings prior to the adoption of the School 3 Board policy? 4 A. No. 5 Q. So, 1974 to 2004 is the period of time 6 during which you were a School Board member with a 7 three year hiatus, so if my arithmetic is right 8 that's 27 years of service prior to the adoption of 9 Board Policy BDA.1, and you were never asked to 10 offer a prayer at a School Board meeting? 11 A. That's correct. 12 Q. Do you know why? 13 A. No. 14 Q. Did you ever tell any Board president that 15 you were not interested in offering a prayer at the 16 School Board meeting? 17 A. No. 18 Q. Again, if my arithmetic is correct, that's 19 well over 300 School Board meetings at which 20 somebody offered a prayer, but you were not invited 21 to do so, did that strike you as off or unusual? 22 A. No. 23 Q. Did you perceive any pattern in the Board 24 president's practice in the selection of the person</p> <p style="text-align: center;">58</p>	<p>1 Q. Was a Muslim Board member ever included in 2 that group? 3 A. I don't call us having a Muslim Board 4 member. 5 Q. Or a Buddhist? 6 A. Same answer. 7 Q. A non-Christian Board member ever included 8 in that group? 9 A. I don't recall us ever having that type of 10 Board member. 11 Q. Would you characterize the members of that 12 smaller group as being particularly religious 13 amongst their peers? 14 MR. GOSSELIN: Objection. 15 A. Do I answer? 16 Q. Yes, sir. 17 A. Can you please ask that question again? 18 Q. Was it -- did you perceive that the 19 criteria for selection of this smaller group was 20 that these were folks who were particularly 21 religious? 22 MR. GOSSELIN: Objection. 23 A. No. 24 Q. Let me just ask the broad question, is it</p> <p style="text-align: center;">60</p>

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<p>1 Q. Do you know precisely when that took place?</p> <p>2 A. No.</p> <p>3 Q. Did Mr. Helms subsequently report on the</p> <p>4 substance of his conversation with Mr. Neuberger to</p> <p>5 the Board?</p> <p>6 A. He got Mr. Neuberger to come and visit us.</p> <p>7 Q. Do you know when that took place?</p> <p>8 A. Not exactly.</p> <p>9 Q. Was it the summer of 2004?</p> <p>10 A. It was after the graduation ceremony, yes.</p> <p>11 Q. Was it before the commencement of the next</p> <p>12 academic year?</p> <p>13 A. Yes, I'm pretty sure it was.</p> <p>14 Q. So, sometime during the summer of 2004?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know whether Mr. Neuberger's visit</p> <p>17 to the Board is reflected in the minutes of the</p> <p>18 Board meeting?</p> <p>19 A. I believe, if I am not mistaken that this</p> <p>20 was a special Board meeting, it wasn't a regular</p> <p>21 Board meeting.</p> <p>22 Q. Okay. Do you know whether the minutes of</p> <p>23 that meeting reflect Mr. Neuberger's attendance?</p> <p>24 A. I thought it was.</p> <p style="text-align: center;">85</p>	<p>1 is there any distinction other than that the public</p> <p>2 is present at those regularly scheduled public</p> <p>3 meetings?</p> <p>4 A. Sometimes there is public at special</p> <p>5 meetings, too.</p> <p>6 Q. Oh, and even if there is public at the</p> <p>7 special meetings you don't offer a pray?</p> <p>8 A. That's correct.</p> <p>9 Q. Is there any distinction from your point of</p> <p>10 view, just as an individual Board member, between a</p> <p>11 special meeting at which the public is present and a</p> <p>12 regular meeting at which the public is present that</p> <p>13 would lead to pray at the latter but not at the</p> <p>14 former?</p> <p>15 A. Except it's always the way that it's been</p> <p>16 done.</p> <p>17 Q. How often does the Board, just an estimate</p> <p>18 over your 30 years of tenure, how often does the</p> <p>19 Board call special Board meetings?</p> <p>20 A. Two to three a year maybe.</p> <p>21 Q. And how often does the public attend</p> <p>22 special Board meetings?</p> <p>23 A. I'm not sure.</p> <p>24 Q. Not very frequently?</p> <p style="text-align: center;">87</p>
<p>1 Q. Did had a special Board meeting open with a</p> <p>2 prayer?</p> <p>3 A. I don't believe it did.</p> <p>4 Q. Why is that?</p> <p>5 A. I know it's probably sounds strange but the</p> <p>6 prayer issue usually is on regular Board meeting.</p> <p>7 If we have a special Board meeting we don't do it.</p> <p>8 Q. Why would your say that sounds strange?</p> <p>9 A. Because we just have a rule, or I guess</p> <p>10 it's a past practice or whatever that we always have</p> <p>11 the prayer at the regular Board meetings but no</p> <p>12 other.</p> <p>13 Q. And when you say the regular Board meetings</p> <p>14 those are the regular meetings at which the public</p> <p>15 is present?</p> <p>16 A. Yes, once a month.</p> <p>17 Q. And is that regular practice it's not just</p> <p>18 today's practice or 2004's regular practice, it's</p> <p>19 the regular practice that goes back in time as far</p> <p>20 as your tenure on the Board extends, correct?</p> <p>21 A. Yes.</p> <p>22 Q. And is that because -- is the distinction</p> <p>23 between public meetings where prayers are offered</p> <p>24 and private meetings where prayers are not offered,</p> <p style="text-align: center;">86</p>	<p>1 A. I wouldn't say not all three of them. Say</p> <p>2 if we do two or three a year, say not all three. It</p> <p>3 depends on what the issue is.</p> <p>4 Q. In this litigation we have had the</p> <p>5 opportunity to look at the minutes of Board</p> <p>6 meetings, and I'll represent to you that since the</p> <p>7 adoption of Policy BDA.1, the School Board Prayer</p> <p>8 Policy on October 19, 2004, since that date there</p> <p>9 have been at least 17 special Board meetings over</p> <p>10 the course of that two year period.</p> <p>11 So, that's eight to nine per year. Has the</p> <p>12 incidents of special Board meetings increased in</p> <p>13 recent years?</p> <p>14 A. The difference between what I'm talking</p> <p>15 about and what you're talking about is we have a</p> <p>16 special Board meeting the we interview for</p> <p>17 personnel, I'm not talking about that. I'm talking</p> <p>18 about issues other than hiring of personnel that we</p> <p>19 have a special Board meeting for.</p> <p>20 Q. Okay, so I can think of it as two</p> <p>21 categories of special meetings, one is a category</p> <p>22 which is limited to hiring personnel for the</p> <p>23 district?</p> <p>24 A. Okay.</p> <p style="text-align: center;">88</p>

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1 Q. Then I should be thinking then there is
2 category of special meeting for everything else?
3 A. Yes.
4 Q. Even it's the everything else type meeting
5 that comes two or three times a year?
6 A. Yes, I would say so.
7 Q. I assume that the personnel special
8 meetings there are no public present?
9 A. That is true.
10 Q. At the other kinds of special meetings
11 sometimes the public is present and sometimes there
12 is nobody from the public there?
13 A. Yes.
14 Q. To come back to Mr. Neuberger, there is a
15 special Board meeting on August 23, 2004 that was
16 addressed in large part to the issue of prayer in
17 the schools. I'll show you the minutes, what
18 portion of the minutes that we have in a little
19 while. It that the meeting and to place this in
20 time, the next day, August 24, 2004, was the meeting
21 at which many hundreds of people showed up. Was it
22 the August 23 special meeting, the day before the
23 big meeting, at which Mr. Neuberger showed up at the
24 Board?

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1 A. I don't think so.
2 Q. Was it before or after that August 24th big
3 meeting?
4 A. If memory serves me correctly it was after.
5 Q. So, that's helpful, thanks. Other than
6 Mr. Neuberger did the Board or the district contact
7 any other lawyer or law firm to investigate issues
8 relating to School Board prayer?
9 A. I believe that Mr. Walls, I think it's the
10 Alliance Defense Fund, I think he had some
11 conversation with them, but the Board never met with
12 anyone from them.
13 Q. How did you find out about Mr. Walls'
14 contacts with the Alliance Defense Fund?
15 A. He told us that he had done it, that's when
16 he was president.
17 Q. Did the Board authorize Mr. Walls to
18 contact the Alliance Defense Fund?
19 A. Not that I'm aware of.
20 Q. So, he did that on his own?
21 A. Yes.
22 Q. Other than Mr. Neuberger and the Alliance
23 Defense Fund, did the Board or the district contact
24 any lawyers for the purpose of investigating the

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1 issue of School Board prayer?
2 A. I don't think so.
3 Q. Did the Board have a regular Board lawyer?
4 A. Yes.
5 Q. In the year of 2004?
6 A. Yes, excuse me.
7 Q. Who was that?
8 A. Mr. Griffin, James Griffin.
9 Q. Did the Board consult with Mr. Griffin on
10 the issue of School Board prayer?
11 A. Yes.
12 Q. And when did the first, when did the Board
13 first consult with Mr. Griffin on that issue?
14 A. Some time after the graduation.
15 Q. In terms of its consultation with
16 Mr. Griffin did that take place before or after the
17 big meeting on August 24th?
18 A. If memory serves me correctly that was
19 afterwards, after too.
20 Q. Okay. So we've identified Mr. Neuberger,
21 the Alliance Defense Fund and Mr. Griffin, any other
22 lawyers that were consulted by the district on the
23 issue of School Board prayer?
24 A. Maybe David Williams.

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1 Q. He's with the Morse James firm?
2 A. I'm not sure.
3 Q. It's okay if you don't know?
4 A. It's a Delaware attorney.
5 Q. Got you. Mr. Williams was retained by the
6 Board in connection with its dispute with its
7 insurer, correct?
8 A. Yes.
9 Q. So that took place after February of 2006?
10 A. Yes.
11 Q. Quite a long time after the adoption of the
12 School Board Prayer Policy?
13 A. Yes.
14 Q. Did the Board ever consult with either John
15 Cafferty or John Balliger on the issue of School
16 Board prayer?
17 A. You mean before they came to work for us or
18 work with us?
19 Q. Before or after they came to work with you?
20 A. I don't think so. I think they were
21 presented to us by the insurance company.
22 Q. Did Mr. Balliger and Mr. Cafferty represent
23 the School District and the School Board?
24 A. Yes.

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1 A. No.
 2 Q. In order to be a practicing Christian do
 3 you consider it necessary to attend church at all?
 4 A. No.
 5 Q. Again on the issue of practice paragraph
 6 three of Board prayer, would you consider that a
 7 student who attends every regular Board meeting and
 8 who hears prayers that regularly mention Jesus
 9 Christ could conclude over time that it is the
 10 Board's view that Christianity is the appropriate
 11 religion?
 12 MR. GOSSELIN: Objection.
 13 A. I guess that's possible.
 14 Q. What I'm trying to get at, Mr. Bireley, is
 15 whether you would consider the cumulative affect of
 16 repeated mention of only one faith or only one
 17 representation of the Deity to have some impact,
 18 cumulative impact over and above the text of a
 19 prayer that's offered?
 20 MR. GOSSELIN: Objection.
 21 Q. Would you agree with that?
 22 A. It's possible.
 23 Q. From your perspective as a Board member do
 24 you think it would be preferable to avoid that kind

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1 question. I'll be a little more general about it.
 2 I won't sort of put the answer in the question.
 3 What was the purpose of the adoption of the Board
 4 Prayer at Regular Board Meetings Policy?
 5 A. What was the purpose?
 6 Q. Yes.
 7 A. To ask for divine guidance for the Board to
 8 help us make correct decisions and get us through
 9 the meeting in the proper way.
 10 Q. What does the proper way mean?
 11 A. To do, to make the best decisions for
 12 what's best for our students.
 13 Q. And is the proper way the way that God
 14 would prefer?
 15 A. In my opinion, yes.
 16 Q. And is the proper way the way that God
 17 personified by Jesus Christ would prefer?
 18 A. In my personal opinion, yes.
 19 Q. And that was the purpose of the adoption of
 20 the School Board Prayer Policy?
 21 A. The purpose of adopting the School Board
 22 policy is to grant us the opportunity to pray for
 23 divine guidance, you know and help us make the right
 24 decisions.

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1 of cumulative impact, that is to say to offer a
 2 variety of kinds of prayers or moments of silence to
 3 solemnize the occasion?
 4 MR. GOSSELIN: Objection.
 5 A. I think the policy, or the practice that we
 6 have right now, where the individual person who is
 7 saying the prayer has the right to say, you know,
 8 whatever they want.
 9 Q. I'm not asking about individual person's
 10 rights, I'm asking about what as a Board member
 11 would consider preferable? Would you consider it
 12 preferable to in order to solemnize the proceedings
 13 for a variety of kinds of prayers, moments of
 14 silence to be offered?
 15 A. I believe in the person's individual right
 16 to say what they want to say when they're in prayer.
 17 I think that's the way it should be.
 18 Q. Was the purpose of the adoption of the
 19 School Board Prayer Policy to solemnify the
 20 proceedings of the Board meetings?
 21 A. By that you mean to ask for like divine
 22 guidance or help us get through the meeting, to make
 23 the right decisions.
 24 Q. I'm really trying to ask a very specific

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1 Q. As a Board member when you cast your vote
 2 in favor of Board Policy BDA.1, you cast that vote
 3 in public, correct?
 4 A. Yes.
 5 Q. And did you expect that members of the
 6 public in attendance would understand that that was
 7 your purpose in adopting the School Board Prayer
 8 Policy?
 9 A. I really had no way of knowing what they
 10 thought.
 11 Q. If a member of the public had raised their
 12 hand, that's not the right way to say it. If they
 13 signed up to ask a question of the Board during the
 14 public comment session at the October 19th meeting,
 15 and had asked the question what was your purpose in
 16 casting your vote for Board Policy BDA.1, is that s
 17 what you would have responded?
 18 A. Not at that time.
 19 Q. What would you have responded at that time?
 20 A. I wouldn't have responded anything.
 21 Q. You would have declined to answer a
 22 question what is your purpose in adopting this
 23 policy?
 24 A. Yes.

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<p>1 with a moment of silence?</p> <p>2 A. Well --</p> <p>3 MR. GOSSELIN: To the extent that</p> <p>4 this is not based on information obtained</p> <p>5 from counsel.</p> <p>6 A. Okay, this would be from individual Board</p> <p>7 members?</p> <p>8 Q. Yes, sir?</p> <p>9 A. It was suggested and was discussed and they</p> <p>10 decided not to do it because they still thought that</p> <p>11 each individual Board member had the right to say</p> <p>12 whatever they wanted to say in their moment of the</p> <p>13 time that they give a prayer.</p> <p>14 Q. Did somebody say look if we just open the</p> <p>15 meeting with a moment of silence it is not going to</p> <p>16 be seeking divine guidance for our decisions at the</p> <p>17 Board meeting?</p> <p>18 A. I don't recall that being said. I don't</p> <p>19 recall anybody saying that.</p> <p>20 Q. The policy itself contemplates, if you look</p> <p>21 at PX9, sir that the Board of Education may choose</p> <p>22 to open its meeting with a moment of silence, right?</p> <p>23 A. Yes.</p> <p>24 Q. And so am I correct that the policy itself</p> <p style="text-align: center;">173</p>	<p>1 A. I guess that's a fair statement.</p> <p>2 Q. Was a reason for the adoption of this</p> <p>3 policy to protect individual Board members' First</p> <p>4 Amendment rights to express their religion as they</p> <p>5 see fit?</p> <p>6 MR. GOSSELIN: Objection.</p> <p>7 A. I will agree.</p> <p>8 Q. Did anybody give any consideration to</p> <p>9 calling this policy the policy to protect individual</p> <p>10 Board members First Amendment rights?</p> <p>11 A. No, not that I recall.</p> <p>12 Q. Do you know why the title of the policy was</p> <p>13 changed from Policy on Prayer at Board Meetings,</p> <p>14 which is what the first Rutherford Institute</p> <p>15 document that Mr. Helms passed to you to Board</p> <p>16 Prayer at Regular Board Meetings?</p> <p>17 A. The only thing I can recall in particular I</p> <p>18 remember someone asking the question that was the</p> <p>19 only time that we did it, and it was stated at</p> <p>20 regular Board meetings because we didn't do it at</p> <p>21 any other type of meetings.</p> <p>22 Q. Got you. That's not because Board members</p> <p>23 didn't think they could equally use divine guidance</p> <p>24 at special Board meetings that you never had done</p> <p style="text-align: center;">175</p>
<p>1 contemplates that moment of silence would be</p> <p>2 effective to solemnify the proceedings?</p> <p>3 A. In some people's mind, yes.</p> <p>4 Q. And the policy itself contemplate that it</p> <p>5 would be effective to solemnify the proceedings by</p> <p>6 opening with a moment of silence, is that correct?</p> <p>7 A. What the policy says?</p> <p>8 Q. Yes, sir. Did anyone raise the question if</p> <p>9 as the policy reflects being a moment of silence</p> <p>10 would be effective to solemnify the proceedings why</p> <p>11 it was necessary also to offer the option to</p> <p>12 individual Board members to open the meetings with a</p> <p>13 prayer?</p> <p>14 A. The discussion that I remember what that</p> <p>15 it's an individual's choice.</p> <p>16 Q. Was the inclusion in the Board Prayer</p> <p>17 Policy of the option to open its meeting with a</p> <p>18 prayer intended to protect individual Board members'</p> <p>19 rights to express their religion as they saw fit?</p> <p>20 MR. GOSSELIN: Objection to the</p> <p>21 form.</p> <p>22 A. To prevent them from doing it?</p> <p>23 Q. To protect their rights to express their</p> <p>24 religion as they saw fit?</p> <p style="text-align: center;">174</p>	<p>1 it?</p> <p>2 A. I guess that's true.</p> <p>3 Q. So, as far as you were able to tell Board</p> <p>4 members did think they needed divine guidance for</p> <p>5 special Board and regular Board meetings?</p> <p>6 A. Yes.</p> <p>7 MR. GOSSELIN: And everywhere</p> <p>8 else.</p> <p>9 Q. In the Board School Board Prayer Policy we</p> <p>10 talked a little bit about how you as the president</p> <p>11 set up the rotating basis, I have a few more</p> <p>12 questions on that.</p> <p>13 As things stand now in your service as the</p> <p>14 Board president, is it correct that you don't on a</p> <p>15 rotating basis offer each Board member the</p> <p>16 opportunity to offer a prayer to open the meeting?</p> <p>17 A. I just offer it to the people who have</p> <p>18 indicated to me that they are willing to do it.</p> <p>19 Q. Would it be fair for me to understand that</p> <p>20 the selection process is done in advance with the</p> <p>21 offer extended only to the, the invitation extended</p> <p>22 to Board members who have previously volunteered to</p> <p>23 participate in this process?</p> <p>24 A. If the other Board members has not</p> <p style="text-align: center;">176</p>

TAB 2

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<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE 3 4 MONA DOBRICH and MARCO DOBRICH, individually 5 And as parents and next friend of ALEXANDER 6 DOBRICH, SAMANTHA DOBRICH, JANE DOE and JO 7 DOE, individually and as parents and next friend 8 of JORDAN DOE and JAMIE DOE, 9 Plaintiffs 10 vs. Civil Action 11 Case No. 15-120 12 INDIAN RIVER SCHOOL DISTRICT, ET AL., 13 Defendants 14 15 DEPOSITION OF NINA LOU BUNTING, taken 16 pursuant to notice at the Indian River School 17 District, 31 Hosier Street, Selbyville, Delaware, 18 beginning at 9:07 a.m. on October 13, 2006 before 19 David A. Sroka, Registered Professional Reporter and 20 Notary Public. 21 APPEARANCES: 22 THOMAS ALLINGHAM, ESQ. 23 RICHARD HORVATH 24 BRIAN LENHARD P.O. Box 636 Wilmington, Delaware 19899-0636 For the Plaintiffs JARROD D. SHAW, ESQ. Drinker Biddle & Reath, LLP One Logan Square Philadelphia, Pennsylvania 19103-6996 For the Defendants</p> <p style="text-align: center;">1</p>	<p>1 The Witness herein, called for examination by 2 the Plaintiffs, having been duly sworn to tell the 3 truth, the whole truth, and nothing but the truth, 4 was examined and testified as follows: 5 EXAMINATION BY MR. ALLINGHAM: 6 Q. Did you attend the August 24, 2004 Board 7 meeting? 8 A. August 24, 2004 Board meeting, are you 9 referring to the one where the public, a lot of 10 people from the public came? 11 Q. Hundreds of people? 12 A. Okay, yes, I did. 13 Q. Did anything occur at that meeting that was 14 disturbing to you personally? 15 A. No. 16 Q. I want to show you a clip of the vide from 17 that meeting? 18 A. Okay. 19 Q. This is a portion from the public comment 20 section of the meeting. 21 A. Okay. 22 (AT THIS POINT IN TIME A TAPE WAS PLAYED) 23 Q. Were you distracted when your telephone 24 rang during that clip? Would you like me to play it</p> <p style="text-align: center;">3</p>
<p>1 MS. DUPHILY: This is the 2 videotape deposition of Ms. Nina Lou 3 Bunting taken by the Plaintiff in the 4 matter of Dobrich, et al. versus Indian 5 River School District, et al., case number 6 15-120. We are going on the record at 31 7 Hosier Boulevard, Selbyville, Delaware 8 on October 12, 2006 at approximately 12:55 9 p.m.. 10 The court reporter is Dave Sroka 11 from the firm of Wilcox & Fetzer, 12 Wilmington, Delaware. My name is 13 Lindsay duPhily and I'm the videotape 14 specialist of Discovery Video Services. 15 Counsel will now introduce 16 themselves and then the court reporter 17 will swear in the witness. 18 MR. ALLINGHAM: I'm Tom Allingham 19 I represent the Plaintiffs in this 20 case, and with me are Richard Horvath and 21 Brian Lenhard. 22 MR. SHAW: I'm Jarrod Shaw and I 23 represent the defendants in this action. 24 NINA LOU BUNTING,</p> <p style="text-align: center;">2</p>	<p>1 again for you? 2 A. No, I don't think I was distracted. I may 3 have been momentarily. 4 Q. Were you present when -- who was speaking 5 during that public comment section? 6 A. Mr. Harold Short. 7 Q. Harold Johnson? 8 A. Harold Johnson, okay. I don't know him 9 that well. I knew it was Harold somebody. 10 Q. Were you present when he made that 11 statement? 12 A. Yes, I was. 13 Q. Did you hear him say that the good Lord has 14 proven that there's a higher power above our Supreme 15 Court? 16 A. I guess I heard him say it. I didn't hang 17 on every word. 18 Q. Did you hear him say that was proven when 19 the last I heard Madelyn Murray-O'Hare disappeared 20 never to be seen again? 21 A. Well, I heard it just now, do I remember -- 22 Q. that's the first time that you heard it? 23 A. I'm sure I heard it that night, but I 24 didn't remember hearing it until you showed me</p> <p style="text-align: center;">4</p>

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<p>1 Mr. Griffin to draft a School Board Prayer Policy? 2 MR. SHAW: I'm going to 3 object to attorney/client privilege. If 4 the Board asked Mr. Griffin that's covered 5 by the privilege. 6 Q. Do you remember whether the Board asked 7 Mr. Griffin what the weather was like? 8 A. No, I don't remember what was asked of 9 Mr. Griffin that evening. 10 Q. The Board Prayer Policy, the process of 11 generating Board policies, I'm going to ask, this is 12 the general process, is it typical that the Board 13 would decide to refer a matter to the policy 14 committee. The policy committee would consult with 15 the Board's attorney, and then the policy committee 16 and the Board's attorney typically would draft a 17 policy for presentation to the full Board? 18 A. Never having attended a policy meeting I 19 can't say what their process is. 20 Q. Fair enough. Do you know whether or not 21 Mr. Griffin ever drafted a draft School Board Prayer 22 Policy? 23 A. I have no idea. 24 Q. The policy that you adopted is a policy</p> <p style="text-align: center;">93</p>	<p>1 Dobrich first talked about her complaint. I don't 2 recall having been to the first Board meeting after 3 that, and when I found out what was going on it was 4 my understanding that Mona Dobrich came to the June 5 Board meeting to complain about prayer at 6 graduation, and then found out that there was prayer 7 at the regular Board meeting. 8 So, it was my understanding that we would 9 draft policy to try to take care of the situation, 10 and I think most things that we tried to do were in 11 hopes of not being sued. 12 Q. This is sort of, maybe an unusual question, 13 but do you feel as a Board member that your rights 14 regarding the free exercise of your religion are 15 infringed by not having a policy on special meeting 16 Board prayer? 17 A. No, I don't think my rights are violated by 18 not having a policy, is that what you mean? 19 Q. Yes, exactly. The other sentence of the 20 limited portion of the executive session minutes, 21 which is Plaintiff's Exhibit 13 that I have reports 22 that, "Several Board members expressed that their 23 constituents do not want the Board to change its 24 practice of opening the meetings with a prayer." Do</p> <p style="text-align: center;">95</p>
<p>1 that is described on its face as, sorry, ma'am, it's 2 titled Board Prayer at Regular Board Meetings. It's 3 quite specific that it's a policy having to do with 4 regular Board meetings. Did anyone give any 5 consideration at the Board level to having a policy 6 that extended to special Board meetings? 7 A. Not to my knowledge because I don't think 8 we had ever had prayer at special Board meetings, so 9 that wasn't even a consideration at this time. 10 Q. Did you understand the -- there was no 11 litigation at the time of the adoption, 12 consideration and adoption of this policy, the 13 litigation was not filed until 2005? 14 A. Okay. 15 Q. So, did you understand that the question 16 that had been raised about prayer at Board meetings 17 was limited to regular Board meetings or did you 18 understand that it extended to all Board meetings? 19 A. I understood that it was about regular 20 Board meetings. 21 Q. And from where did you get that 22 understanding? 23 A. I got the understanding, I don't think I 24 was present, there was the graduation at which Mona</p> <p style="text-align: center;">94</p>	<p>1 you remember which Board members expressed that 2 view? 3 A. I know I was one of them. 4 Q. Do you remember the others? 5 A. And I'm not saying that I expressed that 6 view that evening. I know that over this entire 7 thing I have been bombarded with constituents, and I 8 have expressed that numerous times -- 9 Q. Okay. 10 A. -- not necessarily just at this one time. 11 Q. And when say that you've been bombarded 12 with communications from constituents, give me a 13 ballpark number 50, 100, 1000? 14 A. In the hundreds. I'm not saying phone 15 calls and emails and letters. I know everyone in 16 this -- well, I know a lot of the people in this 17 community, and we go to restaurants in this 18 community, we go grocery shopping, we're at ball 19 games with our grandchildren and people come up to 20 me all the time. I know for a fact that five people 21 this week have come up to me, one lady that I had 22 called on the phone about something, so these people 23 have expressed this to us. 24 Q. What are they expressing?</p> <p style="text-align: center;">96</p>

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<p>1 A. They want us to stand firm, they want us to 2 take a stand for what we feel is right and they are 3 behind us and they support us. 4 Q. Does anybody articulate what it is that you 5 are suppose to be standing firm for? 6 A. We are standing firm for being able to have 7 the right to say a prayer at the regular Board 8 meeting aloud. 9 Q. And it's a fine distinction, but your 10 answer is couched in terms of what you are standing 11 firm for, and what I was trying to ask was, did 12 anybody who's called you or bumped into you on the 13 street or whatever, have they articulated to you 14 what they think you're suppose to be standing up 15 for? 16 A. Yes. 17 Q. And have some of them articulated that they 18 want you to stand firm for School Board prayer? 19 A. Yes. 20 Q. Are have some of them articulated to you 21 that they want you to stand firm for prayer in the 22 schools? 23 A. No, sir because they understand that that's 24 already been -- there's already been a decision</p> <p style="text-align: center;">97</p>	<p>1 Neck area. I feel like I have a foot, I don't know 2 if you are familiar with our district, but we are 3 sort of north and south, I have a foot in the north 4 and also in the south. 5 Q. That's the second time you've sort of 6 talked about the north and the south of the 7 district, is there, or has been in the past a divide 8 between the north and the south? 9 A. Very much so. 10 Q. Tell me what mean by that? 11 A. We were put together as a district in 1969 12 by the courts, and there are some people who are 13 still upset that it was such a large district put 14 together, and we have to have two high schools 15 because it's such a large district, and our high 16 schools play sports against each other, which isn't 17 real good, so we are our own arch enemies. 18 So, therefore as a Board when we have to 19 decide about which time gets new uniforms, which 20 team gets turf on their football, see what I mean? 21 So, being on this School Board I was warned could be 22 tough because of a north south split sometimes on 23 decisions. 24 Q. And I guess particularly tough for you</p> <p style="text-align: center;">99</p>
<p>1 about that. 2 Q. It appeared that a number of the 3 constituents at the August 24th meeting didn't 4 understand that? 5 A. True, but it's been two years now and 6 people by reading the paper and all I think most 7 people now are aware of what the situation truly is. 8 Q. Okay. Have you received any comments that 9 a constituent of yours thought that the policy 10 should be revised? 11 A. No, sir. 12 Q. So, the comments that you've received from 13 your constituents have been unanimous? 14 A. Yes, sir. 15 Q. And that's important to you, isn't it? 16 A. Well, it's important to me because I 17 represent these people and they elected me to make 18 decisions at the Board level on their behalf, and I 19 represent my people. 20 Q. Do you know how many residents there are in 21 your district? Which is your district, 22 Mrs. Bunting? 23 A. I'm district three. I have part of 24 Dagsboro, all of Millsboro, down toward the Long</p> <p style="text-align: center;">98</p>	<p>1 because your district is sort of part north and part 2 south? 3 A. Yes, but I taught in this district and I 4 don't see a north and south, I see one district. 5 Q. In terms of the members, the current 6 members of the Board, which are from the northern 7 half and which are from the southern half? 8 A. The present members? 9 Q. Yes, ma'am. 10 A. Okay, I'll start with the southern half. 11 That would be Charlie Bireley, Reggie Helms, Donna 12 Mitchell, Donald Hattier. 13 Q. And the rest are from the north? 14 A. There are the two of us straddle, and that 15 would be Randy Hughes and myself. We are the 16 straddlers. And then the rest are from the 17 northern. 18 Q. In the course of those hundred or hundreds 19 of comments from your constituents has anyone said 20 to you that you should stand firm for Christian 21 values? 22 A. No. 23 Q. Not one? 24 A. No. Not Christian values. That's never</p> <p style="text-align: center;">100</p>

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<p>1 been the terminology used. I will say it's fight 2 the ACLU. And it's been we've always had prayer, 3 why can't we have prayer, we should have prayer, 4 it's our right to have prayer, but stand firm for 5 Christian values I don't think that terminology has 6 ever been used, not with me. 7 Q. You mentioned that your constituents 8 generally speaking have told you that you should 9 stand firm for prayer at regular Board meetings? 10 A. Uh-hum. 11 Q. And do they draw that distinction between 12 regular Board meetings and special Board meetings? 13 A. No. 14 Q. So, they said stand firm for Board prayer? 15 A. For Board meetings, for praying at the 16 Board meetings. 17 Q. And what do you say to your constituents 18 when they say that? 19 A. When I say that I say that we are -- what 20 can we do, we are listening to our lawyers, we are 21 doing what we need to do, and if the case goes to 22 court, you know, the judge will decide. See we 23 have, we can't talk about this as you well know, so 24 we have to be extremely careful what we say.</p> <p>101</p>	<p>1 A. (Nods head). 2 Q. No one has told you that you should stand 3 firm for Christian values? 4 A. I'm not going to say the words Christian 5 values have never been mentioned, but to my 6 knowledge no one has called it Christian values. 7 They know that the situation is prayer at Board 8 meetings and they usually are the words they use. 9 Prayer, Board meetings. 10 Q. Well, the litigation is, of course about 11 more than just prayer at Board meetings, correct? 12 A. Well, they don't know that. 13 Q. Have you ever received hundreds of comments 14 about any other issue that has faced the Board from 15 your constituents? 16 A. No, sir. 17 Q. Have you ever received even a fraction of 18 that many comments on any other issue? 19 A. Not even a fraction. The closest I ever 20 came to was when we were going to, our calendar 21 situation, a calendar situation, where we wanted to 22 shorten the Easter break and make it just Friday and 23 Monday because we didn't have air conditioning in 24 all the schools yet and, you know, and the parents</p> <p>103</p>
<p>1 Q. I apologize, but I don't know what do you 2 mean when you say you can't talk about this? 3 A. We've been told to be very careful what we 4 say in public, okay? 5 Q. By your lawyer? 6 A. By our lawyers. 7 Q. Nevertheless, from time to time members of 8 the Board have given statements or interviews to the 9 press, is that correct? 10 A. True. 11 Q. And members of the Board have gone on the 12 local radio station? 13 A. Yes, sir. 14 Q. In your view are those actions consistent 15 with the admonition from your lawyers that you 16 should be very, very careful about what you say? 17 A. They were happening before we got, before 18 we were told to be extremely careful. We didn't 19 have good representation in the beginning. 20 Q. And that situation's been corrected now? 21 A. Yes, sir. 22 Q. So, in the comments from your constituents 23 that have been unanimous that you should stand firm 24 for School Board prayer?</p> <p>102</p>	<p>1 got really upset because they felt the children 2 needed a break after the state test. And I did get 3 many phone calls about that, but nothing, nothing 4 compared to this. 5 Q. Would it be fair to say that this is the 6 issue in which your constituents have been most 7 intensely interested over the entire tenure, over 8 your entire tenure on the Board? 9 A. Well, certainly the last several years of 10 my tenure. Not so at the very beginning between '02 11 and '04. 12 Q. Yes, the interest has been very intense 13 since '04? 14 A. Since '04. 15 Q. And the intensity of that interest is the 16 greatest of any issue that's ever been presented to 17 the Board -- 18 A. Yes. 19 Q. -- during your tenure? 20 A. Yes, in my knowledge, as far as I'm 21 concerned. 22 Q. Do you know who the Does are? 23 A. No, sir. 24 Q. Has anybody ever told you they think they</p> <p>104</p>

TAB 3

Cohee, Richard (Video) 10/17/2006 1:17:00 PM

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE 3 MONA DOBRICH and MARCO : C.A. No. 15-120 (J. 4 DOBRICH, Individually and : 5 as parents and next friend : 6 of ALEXANDER DOBRICH : 7 SAMANTHA DOBRICH, JANE DOE : 8 and JOHN DOE, Individually : 9 and as parents and next : 10 friend of JORDAN DOE and : 11 JAMIE DOE, : 12 Plaintiffs, : 13 v. : 14 INDIAN RIVER SCHOOL : 15 DISTRICT, et al., : 16 Defendants. : 17 Videotaped Deposition of RICHARD COHEE, 18 taken pursuant to notice, on Tuesday, October 17, 2006 19 at 1:17 p.m. at 31 Hosier Street, Selbyville, Delaware, 20 reported by Lorena J. Hartnett, a Registered 21 Professional Reporter and Notary Public. 22 APPEARANCES: : 23 BRIAN G. LENHARD, ESQUIRE 24 RICHARD HORVATH, ESQUIRE One Rodney Square Wilmington, DE 19801 Attorney for the Plaintiff WILCOX & FETZER 1330 King Street - Wilmington, DE 19801 302-655-0477 www.wilfet.com</p> <p style="text-align: center;">1</p>	<p>1 2 3 TABLE OF CONTENTS 4 TESTIMONY OF RICHARD COHEE: 5 Direct Examination by Mr. Lenhard 4 6 Certificate of Reporter 116 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">3</p>
<p>1 2 APPEARANCES (CONTINUED): 3 JASON P. GOSSELIN, ESQUIRE 4 Drinker, Biddle & Reath, LLP 5 One Logan Square 6 18th and Cherry Streets 7 Philadelphia, PA 19103-6996 8 Attorney for the Defendants 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">2</p>	<p>1 VIDEOGRAPHER: This is the videotaped 2 deposition of Mr. Richard Cohee taken by the 3 plaintiff in the matter of Dobrich et al 4 versus Indian River School District, et al, 5 Case Number 15-120. This deposition is 6 being held at 31 Hosier Boulevard. We are 7 going on the record on October 17, 2006 at 8 approximately 1:17 p.m. 9 The court reporter is Lorena Hartnett 10 from the firm of Wilcox and Fetzer, 11 Wilmington, Delaware. My name is Lindsay 12 DuPhilly. I am the videotape specialist with 13 Discovery Video Services. 14 Counsel will now introduce themselves 15 and the court reporter will swear in the 16 witness. 17 MR. LENHARD: My name is Brian 18 Lenhard, and I represent the plaintiffs in 19 this action. 20 MR. GOSSELIN: Jason Gosselin for 21 defendants. 22 RICHARD COHEE, 23 HAVING FIRST BEEN DULY SWORN, TESTIFIED AS 24 DIRECT EXAMINATION ON BEHALF OF THE PLAIN</p> <p style="text-align: center;">4</p>

Cohee, Richard (Video) 10/17/2006 1:17:00 PM

<p>1 A. That's okay. I take them on and off a 2 hundred times a day. 3 Q. Okay, if you turn to page four, which is 4 BPD702, you will see where the numbered paragraphs 5 start. 6 A. Okay, page four? 7 Q. About halfway down there is, it starts, the 8 paragraph starts, "In order to solemnify." Do you see 9 that? 10 A. Okay, number one? 11 Q. Number one. 12 A. Uh-huh. 13 Q. If you look at that and look at PX9 at the 14 same time, do you see that those paragraphs are 15 substantially the same? 16 A. Yes. 17 Q. Do you want to take the time to read it, or 18 have you read it before? 19 A. I recall this. 20 Q. Okay. 21 A. And I know that there is a lot of 22 similarities, as I skim through here, with those five 23 sections. 24 Q. Did anyone from the public ever ask you for a</p> <p style="text-align: center;">65</p>	<p>1 I can't sit here and say that with certainty. 2 Q. Can you turn to the second page of PX 14? On 3 the second page of that you will see there is a roll 4 call. 5 A. Okay. 6 Q. And you are listed there as present? 7 A. Yes. 8 Q. And the next section lists other visitors and 9 staff in attendance? 10 A. Yes. 11 Q. Can you tell me why those people were there 12 to discuss litigation? 13 A. No. Specifically, no. I will say that it 14 has been an occurrence that the superintendent and/or 15 the assistant superintendent has been present during, 16 over the years during discussion of potential 17 litigation or pending litigation, along with Janet 18 Hearn, who was our recording secretary. 19 Patrick Miller was finance. I am not sure 20 what role he would have played in that discussion. 21 And Jim Griffin at the time was an attorney. 22 Q. Okay, so in your discussion you mentioned the 23 superintendent and the assistant superintendent. 24 That's Ms. Hobbs is the superintendent?</p> <p style="text-align: center;">67</p>
<p>1 copy of this policy, PX9? 2 A. I don't know. I don't recall it. 3 Q. Did anyone submit -- Can you -- Strike that. 4 A. If I were to be asked, I would most likely 5 refer them to Central Office. 6 Q. Okay. All right, now I would like to give 7 you two documents which again you probably have over 8 there, PX13 and PX14. Do you recall why the board met 9 on August 23, 2004? 10 A. Well, it says here to discuss potential 11 pending litigation. The number there would identify 12 the issue, and I don't recall what number that was 13 used to identify the issue. 14 Q. You don't recall whether it meant -- 15 A. 0501PL, I don't know if that's the number 16 that refers to the issue that we are here for today or 17 not. 18 Q. Do you recall whether it had to do with 19 school board prayer in general? 20 A. I would -- Well, I know we had a number of 21 meetings about that, these issues, and I know some I 22 attended and some I did not. I would -- Well, I don't 23 want to guess, but my thoughts are this meeting could 24 have very well been in reference to these issues, but</p> <p style="text-align: center;">66</p>	<p>1 A. She was at that time. 2 Q. And Mr. Savage is assistant superintendent? 3 A. And he still is, yes. I think he was at that 4 time, but he is now. Can I clarify something, though? 5 Q. Sure. 6 A. That is the beginning of the meeting. Okay? 7 And then that's the roll call and the recording of who 8 is present, and then we go into executive session. 9 So whether or not those people all stayed, I 10 don't know. They could have been asked to leave, as 11 we have done on other occasions. 12 For example, it strikes me as a little odd 13 that the finance person was there. I would almost 14 venture to say that on this particular issue he was 15 asked or knew to step out, but I don't know that with 16 certainty. 17 Q. Well, let me ask you a question. Does the 18 board invite people to special meetings? 19 A. Depending on the issue, the board requires or 20 asks for certain information and it comes from various 21 sources. 22 Q. Well, if you look through the minutes, -- 23 A. Okay. 24 Q. -- which is simply that one page, do you see</p> <p style="text-align: center;">68</p>

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<p>1 reaction to Dr. Hattier's prayer or the announcement</p> <p>2 that Dr. Hattier would give a prayer on August 24,</p> <p>3 2004?</p> <p>4 A. Um, I don't remember the reaction, but I</p> <p>5 think there was a lot of concern as to whether we</p> <p>6 would or not, and if there was any reaction at all, it</p> <p>7 most likely would have -- I shouldn't say that most</p> <p>8 likely, because I don't know. It would probably have</p> <p>9 been supportive.</p> <p>10 Q. When you said that the prayer was for the</p> <p>11 board members, is that because of the disclaimer?</p> <p>12 A. No, because it was for the board members long</p> <p>13 before we had the disclaimer or that policy.</p> <p>14 Q. Okay, have you ever seen someone get up and</p> <p>15 leave the meeting or attempt to leave the meeting when</p> <p>16 there is an announcement that a prayer is going to be</p> <p>17 given?</p> <p>18 A. Um, well, I will say that different times</p> <p>19 during the meeting people come and go for a lot of</p> <p>20 reasons. Okay? I can't sit here and say that I have</p> <p>21 seen anyone go for in response to the prayer preface,</p> <p>22 and I can't say that I have ever really watched to see</p> <p>23 if that occurred.</p> <p>24 Q. Are students in the audience when the prayer</p> <p style="text-align: center;">113</p>	<p>1 VIDEOGRAPHER: This deposition is</p> <p>2 ending at approximately 4:12 p.m.</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p style="text-align: center;">115</p>
<p>1 is given?</p> <p>2 A. Most often.</p> <p>3 Q. Have all the prayers been Christian?</p> <p>4 A. I think you asked that earlier, and, to my</p> <p>5 knowledge, I would have to say the majority have been.</p> <p>6 Q. Do you recall any prayer in the name of</p> <p>7 Jehovah?</p> <p>8 A. No, I can't.</p> <p>9 Q. Any prayer in the name of Buddha?</p> <p>10 A. No.</p> <p>11 Q. Any prayer in the name of Allah?</p> <p>12 A. No.</p> <p>13 Q. So can you recall any prayer for any other</p> <p>14 religious deity besides Jesus or the Christian God?</p> <p>15 A. Other than the moment of silence, which would</p> <p>16 not address either faith.</p> <p>17 Q. Has anyone served on the school board who is</p> <p>18 not Christian?</p> <p>19 A. I do not know that is true. I don't make it</p> <p>20 a point of asking people their religion or beliefs,</p> <p>21 and it wouldn't have made any difference to me.</p> <p>22 MR. LENHARD: I think that's all the</p> <p>23 questions I have. Thank you very much.</p> <p>24 THE WITNESS: Thank you.</p> <p style="text-align: center;">114</p>	<p>1 CERTIFICATE</p> <p>2 I, Lorena J. Hartnett, a Notary Public and</p> <p>3 Registered Professional Reporter, do hereby certify</p> <p>4 that the witness, RICHARD COHEE, was by me first</p> <p>5 duly sworn to testify the truth, the whole truth, and</p> <p>6 nothing but the truth; that the foregoing deposition</p> <p>7 was taken at the time and place stated herein; and</p> <p>8 that the said deposition was recorded stenographically</p> <p>9 by me and then reduced to typewriting under my</p> <p>10 direction, and constitutes a true record of the</p> <p>11 testimony given by said witness.</p> <p>12 I further certify that the inspection,</p> <p>13 reading and signing of said deposition was not waived</p> <p>14 by counsel for the parties and by the witness.</p> <p>15 I further certify that I am not a relative,</p> <p>16 employee, or attorney of any of the parties or a</p> <p>17 relative or employee of either counsel, and that I am</p> <p>18 in no way interested directly or indirectly in this</p> <p>19 action.</p> <p>20 IN WITNESS WHEREOF, I have hereunto set my</p> <p>21 hand and affixed my seal of office on this 24th day of</p> <p>22 October 2006.</p> <p>23</p> <p>24 Cert. #134-RPR, Exp. 01-31-2008</p> <p style="text-align: center;">116</p>

TAB 4

Dobrich, Marco 11/1/2006 12:55:00 PM

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE 3 MONA DOBRICH, et al., : CIVIL ACTION 4 Plaintiffs, : 5 -v- : 6 INDIAN RIVER SCHOOL : 7 DISTRICT, et al., : NO. 05-120-JJF 8 Defendants. : 9 Deposition of MARCO DOBRICH, taken before 10 Elaine Gallagher Parrish, Registered Professional 11 Reporter, at 1100 North Market Street, Suite 1000, 12 Wilmington, Delaware on November 10, 2006, commen 13 approximately at 12:55 p.m. 14 APPEARANCES: 15 THOMAS J. ALLINGHAM, II, ESQ. 16 BRIAN G. LENIHARD, ESQ. 17 One Rodney Square 18 P.O. Box 636 19 Wilmington, Delaware 19899-0636 20 for the Plaintiffs, 21 JARROD D. SHAW, ESQ. 22 Drinker Biddle & Reath, LLP 23 One Logan Square 24 18th and Cherry Streets Philadelphia, Pennsylvania 19103-6996 for the Defendant. ALSO PRESENT: Timothy Kearns Kristhy Peguero Mona Dobrich, Plaintiff WILCOX & FETZER 1330 King Street - Wilmington, Delaware 19801 (302)655-0477 www.wilcof.com</p> <p style="text-align: center;">1</p>	<p>1 Q. What did you do to prepare for today's 2 deposition? 3 A. Met with the lawyers a couple weeks ago. 4 Q. I believe you said your answer was you met with 5 your attorneys to prepare for the litigation or for the 6 deposition? 7 A. Yes. 8 Q. Did you discuss the deposition with anyone else? 9 A. No. 10 Q. Okay. Did your attorney show you any documents 11 at that point? 12 A. No. 13 Q. Mr. Dobrich, where do you currently live? 14 A. Georgetown, Delaware, 154 David Street. 15 Q. That's my next question. 16 A. Pine Grove Manor. 17 Q. Do you live in a house there? 18 A. Yes. 19 Q. Do you rent the house? 20 A. No, I live with my wife's sister. 21 Q. Okay. Just for the record, where did you live 22 before that? 23 A. 174 Georgetown -- Route 1, 174, Georgetown, 24 Delaware.</p> <p style="text-align: center;">3</p>
<p>1 MARCO DOBRICH, 2 having been first duly sworn according to law, was 3 examined and testified as follows: 4 --- 5 BY MR. SHAW: 6 Q. Mr. Dobrich, I know you heard this earlier, but 7 I'll give it again pretty quickly. My name is Jarrod 8 Shaw and I represent the Defendants in this litigation. 9 I am going to ask you a bunch of questions to which 10 you'll respond. If you don't understand the question, 11 please ask me to either repeat it or rephrase it. 12 Because if you give your answer it will look on the 13 transcript as though you understood the question and 14 your answer was to that question. So I just want to 15 make sure that you're clear. 16 A. Yes. 17 Q. So please feel free to ask me to rephrase or to 18 repeat my question. 19 Again, if you need to take a break at any 20 point, just let me know and we'll stop and you can take 21 a break. 22 A. Okay. 23 Q. Have you ever been deposed before? 24 A. No.</p> <p style="text-align: center;">2</p>	<p>1 Q. And how long did you live there for? 2 A. 19 years. 3 Q. Did you grow up in Georgetown? 4 A. No. 5 Q. Where did you grow up? 6 A. Seaford, Delaware. 7 Q. Seaford, Delaware? 8 A. 19947 -- or 73. 9 Q. What county is that in? 10 A. Sussex. 11 Q. It's in Sussex County. Is it the Indian River 12 School District? 13 A. No. 14 Q. No. Okay. Is your high school a rival with 15 their high school? 16 A. No, we were with Laurel. 17 Q. Oh, okay. So you did not live in the Indian 18 River School District until you moved into the home at 19 174 Georgetown? 20 A. Yes. 21 Q. Are Samantha and Alex your only children? 22 A. Yes. 23 Q. So is this your first marriage? 24 A. Yes.</p> <p style="text-align: center;">4</p>

Dobrich, Marco 11/1/2006 12:55:00 PM

<p>1 A. Before this? '04 or altogether?</p> <p>2 Q. I'll rephrase. Right now I'm speaking before</p> <p>3 June 15th, 2004, do you know approximately how many</p> <p>4 School Board meetings you attended?</p> <p>5 A. Six or seven.</p> <p>6 Q. Six or seven. Was Mrs. Dobrich with you at all</p> <p>7 those meetings?</p> <p>8 A. Not at all of -- not at all of them.</p> <p>9 Q. Okay. Were Alex and Samantha or Samantha with</p> <p>10 you at any of those meetings?</p> <p>11 A. Maybe one or two.</p> <p>12 Q. Let me break it down. Was Alex at one or two?</p> <p>13 A. Yes.</p> <p>14 Q. And then Samantha was maybe at one or two?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Did the School Board offer a prayer at</p> <p>17 any of those meetings?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Do you remember what that prayer was?</p> <p>20 A. What they said?</p> <p>21 Q. Yeah. If you could remember, was it in Jesus's</p> <p>22 name?</p> <p>23 A. Most of them were. Probably all of them.</p> <p>24 Q. Is it your recollection that all of them were or</p> <p style="text-align: center;">9</p>	<p>1 straight at that meeting?</p> <p>2 A. No.</p> <p>3 Q. Why did you bow your head at the meeting?</p> <p>4 A. Feel like I was obligated because they said to,</p> <p>5 and everybody around was doing it.</p> <p>6 Q. Okay. Mr. Dobrich, would you have a problem</p> <p>7 with nondenominational prayer at the school or prayer</p> <p>8 meetings?</p> <p>9 MR. ALLINGHAM: Object to the form of the</p> <p>10 question. You may answer it.</p> <p>11 THE WITNESS: As long as they don't say</p> <p>12 within, you know, Jesus's name.</p> <p>13 BY MR. SHAW:</p> <p>14 Q. Would you be okay if they said in God's name?</p> <p>15 MR. ALLINGHAM: Object to the form of the</p> <p>16 question.</p> <p>17 BY MR. SHAW:</p> <p>18 Q. Let me rephrase. Would you be okay if the</p> <p>19 School Board members said in God's name?</p> <p>20 MR. ALLINGHAM: Object to the form of the</p> <p>21 question.</p> <p>22 THE WITNESS: Yes, I would.</p> <p>23 BY MR. SHAW:</p> <p>24 Q. Okay. Why is it okay if the Board members said</p> <p style="text-align: center;">11</p>
<p>1 most of them were?</p> <p>2 A. I would say all.</p> <p>3 Q. Did they ask you -- did the School Board ask you</p> <p>4 -- or let me rephrase.</p> <p>5 Did the School Board ask the audience</p> <p>6 members to bow their head before the prayer was given</p> <p>7 A. Yes.</p> <p>8 Q. At all of the meetings?</p> <p>9 A. Yes.</p> <p>10 Q. Did you bow your head?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know if -- you testified that Alex was</p> <p>13 with you at one or two of these meetings?</p> <p>14 A. Yes.</p> <p>15 Q. Did Alex also bow his head?</p> <p>16 A. He kept his head straight ahead.</p> <p>17 Q. We can't take the hand motions down on the</p> <p>18 record.</p> <p>19 A. Straight. I mean maybe at one he did straight</p> <p>20 but he probably put his head down at one -- the other</p> <p>21 one.</p> <p>22 Q. Okay. Did Samantha bow her head, do you know</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Did you ask Alex why he kept his head</p> <p style="text-align: center;">10</p>	<p>1 it in God's name but not okay if they say in Jesus's</p> <p>2 name?</p> <p>3 MR. ALLINGHAM: Object to the form of the</p> <p>4 question.</p> <p>5 BY MR. SHAW:</p> <p>6 Q. In your mind?</p> <p>7 A. In my mind I think they should do it before</p> <p>8 anybody is in there. They should do it, you know, in</p> <p>9 the back room before they come in there to start the</p> <p>10 Board meeting.</p> <p>11 Q. Okay. Is it okay if they say in God's name at</p> <p>12 the meeting?</p> <p>13 MR. ALLINGHAM: Object to the form.</p> <p>14 MR. SHAW: In your mind.</p> <p>15 MR. ALLINGHAM: I object to the form of the</p> <p>16 question.</p> <p>17 THE WITNESS: I don't think they should say</p> <p>18 anything really.</p> <p>19 BY MR. SHAW:</p> <p>20 Q. Mr. Dobrich, I am going to show you what's been</p> <p>21 previously marked as plaintiff's Exhibit 9. I think you</p> <p>22 have it in front of you. I'll represent to you that</p> <p>23 this is the Board prayer at regular Board meetings.</p> <p>24 It's designated by BDA-1. Have you ever seen this</p> <p style="text-align: center;">12</p>

Unsigned

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TAB 5

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<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE 3 MONA DOBRICH, et al., : CIVIL ACTION 4 Plaintiffs, : 5 -v- : 6 INDIAN RIVER SCHOOL : NO. 05-120-JJF 7 DISTRICT, et al. : Defendants. : 8 Deposition of MONA DOBRICH, taken before 9 Elaine Gallagher Parrish, Registered Professional 10 Reporter, at 1100 North Market Street, Suite 1000, 11 Wilmington, Delaware on November 10, 2006, commen 12 approximately at 11:05 a.m. 13 APPEARANCES: 14 THOMAS J. ALLINGHAM, II, ESQ. 15 BRIAN G. LENHARD, ESQ. 16 One Rodney Square 17 P.O. Box 636 18 Wilmington, Delaware 19899-0636 19 for the Plaintiffs, 20 JARROD D. SHAW, ESQ. 21 Drinker Biddle & Reath, LLP 22 One Logan Square 23 18th and Cherry Streets 24 Philadelphia, Pennsylvania 19103-6996 for the Defendant. ALSO PRESENT: Timothy Kearns Kristhy Peguero Marco Dobrich, Plaintiff WILCOX & FETZER 1330 King Street - Wilmington, Delaware 19801 (302)655-0477 www.wilfel.com</p> <p style="text-align: center;">1</p>	<p>1 deposition? 2 A. I met with my lawyer last week. 3 Q. Okay. Do you remember when last week? 4 A. I don't even know if it was last week. 5 Q. Okay. 6 A. It might be last week. I'm not sure. 7 Q. One other thing before we get going, if you 8 could wait until I finish and I'll do the same for you. 9 The Court Reporter can't take down both at the same 10 time, so it will just get a bit confusing. 11 Okay. When you met with your attorneys 12 were you shown any documents? 13 A. No. 14 Q. No? Okay. And have you spoken with anyone else 15 regarding your deposition today? 16 A. No. 17 Q. All right. Mrs. Dobrich, where do you currently 18 live? 19 A. 1428 Emory Road, Wilmington, Delaware, 19803. 20 Q. And how long have you lived there? 21 A. One year and three months. 22 Q. Do you live in a house? 23 A. We rent a house. 24 Q. You rent a house? Okay. And where did you live</p> <p style="text-align: center;">3</p>
<p>1 MONA DOBRICH, 2 having been first duly affirmed according to law, was 3 examined and testified as follows: 4 --- 5 BY MR. SHAW: 6 Q. Hi, Mrs. Dobrich. Thank you for coming today. 7 My name is Jarrod Shaw and I represent the Defendant 8 this action. We're going to go through a process today 9 of asking you some questions or I'll go through the 10 process of asking you questions and you'll answer them 11 I ask if you can't hear me or you need me to repeat a 12 question, or you don't understand what I'm asking that 13 you ask me to repeat it or rephrase it. If you answer 14 the question as I ask it, it's going to look on the 15 transcript as though you understood what I was asking. 16 A. Okay. 17 Q. So it's important that you take a moment and 18 think about the question before you answer it. And if 19 you don't understand it, I'll be happy to rephrase for 20 you. 21 A. Okay. 22 Q. Have you ever been deposed before? 23 A. No. 24 Q. Okay. What did you do to prepare for today's</p> <p style="text-align: center;">2</p>	<p>1 before the Wilmington address? 2 A. We rented an apartment in Wilmington at Top of 3 the Hill. 4 Q. Is that the name of the apartment complex? 5 A. Yes. 6 Q. Okay. And how long did you rent that apartment 7 for? 8 A. One year. 9 Q. And you said we, who do you mean by we? 10 A. Myself and my son, Alex. 11 Q. Okay. I assume by that Alex goes by Alex? 12 A. Correct. 13 Q. Okay. And before you moved to the apartments a 14 Top of the Hill, where did you live? 15 A. In Georgetown, Delaware. 16 Q. Did you own a house in Georgetown? 17 A. Yes. 18 Q. Okay. Do you still own the house in Georgetown? 19 A. No. 20 Q. Okay. And how long did you live at the house in 21 Georgetown for? 22 A. 19 years. 23 Q. 19 years. Just for the record, what was the 24 address, if you remember?</p> <p style="text-align: center;">4</p>

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<p>1 A. I could not say for certain. 2 Q. And I'm only asking because if it was somebody 3 who was on the Board then and not now it might help 4 place the time. Were those meetings that you attended 5 while your children were in the school district? 6 A. Yes. 7 Q. Do you recall any of the prayers that were 8 offered while you were in attendance at those meetings? 9 A. No. 10 Q. Do you recall if any of them were in Jesus's 11 name? 12 A. Yes. 13 Q. Do you recall if all of them were in Jesus's 14 name? 15 A. Yes. 16 Q. Did you have any idea that -- I'll rephrase. 17 It's been testified to earlier that the Indian River 18 School District has a custom or practice of offering a 19 prayer at the beginning of its School Board members? 20 MR. ALLINGHAM: School Board meetings. 21 MR. SHAW: At the beginning, thank you, of 22 its School Board meetings, did you have any -- do you 23 have an understanding that it's a School Board custom 24 and practice of offering a prayer at the beginning of</p> <p style="text-align: center;">37</p>	<p>1 A. At School Board meetings? No. 2 Q. Okay. It was when you met with Dr. Hattier in 3 2004, was that the first time you complained about the 4 prayer at the School Board meeting? 5 A. I did not complain at that time about the prayer 6 at the School Board meeting. 7 Q. Okay. When did you complain about the prayer a 8 the School Board meeting? 9 A. I'm unsure. 10 Q. This would be a good time for a break if you 11 need to use the ladies room. 12 (Recess taken.) 13 BY MR. SHAW: 14 Q. We can go back on the record. Okay. 15 Mrs. Dobrich, you testified that you had not complained 16 about the School Board prayer or prayer at School Boar 17 meetings prior to June 15th, 2004, is that correct? 18 A. That's correct. 19 Q. Okay. You also testified in sum or substance 20 that you had heard prayers at School Board meetings 21 previously? 22 A. Correct. 23 Q. Okay. What did you do during those prayers 24 while you were in the meeting?</p> <p style="text-align: center;">39</p>
<p>1 its meetings? 2 MR. ALLINGHAM: I object to the form of the 3 question. 4 THE WITNESS: I don't understand your 5 question. 6 BY MR. SHAW: 7 Q. Sure. I'll rephrase. You have been to several 8 of the School Board meetings? 9 A. Yes. 10 Q. And at every meeting a prayer has been offered? 11 A. Yes. 12 Q. That you have attended? 13 A. Yes. 14 Q. Would you consider it to be a custom or a 15 practice -- I'll rephrase. Would you expect that every 16 School Board meeting you would have attended would I 17 offered a prayer at the beginning? 18 MR. ALLINGHAM: I object to the form of the 19 question. 20 THE WITNESS: I always hoped that there 21 wouldn't be. It always seemed to open with one. 22 BY MR. SHAW: 23 Q. Okay. Did you ever complain about any of those 24 prayers before?</p> <p style="text-align: center;">38</p>	<p>1 A. They request that you bow your head. 2 Q. Okay. Did you bow your head? 3 A. Yes. 4 Q. When you left the meeting did you speak with 5 anyone about the meeting? 6 MR. ALLINGHAM: Which meeting? 7 BY MR. SHAW: 8 Q. I'm sorry. You don't remember any of the dates 9 of those previous meetings, do you? 10 A. No. 11 Q. Okay. Let's take this meeting where you bowed 12 your head, do you remember discussing that with anybo 13 A. Yes, I spoke to my daughter and my husband abo 14 it and said that it made me feel really bad to have to 15 do that and I felt like I was being forced to, and I 16 asked my daughter what she did in instances like that. 17 Q. What do you mean by made you feel really bad? 18 A. It made me feel that in my religion you are not 19 to bow to false Gods and it made me feel as if I was 20 being forced to bow down to what I believed to be a 21 false God. 22 Q. Okay. You felt like you had to bow your head at 23 the meeting? 24 A. The people who were running the meeting said bc</p> <p style="text-align: center;">40</p>

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<p>1 your head.</p> <p>2 Q. Okay. Did you feel like you had any choice not</p> <p>3 to bow your head?</p> <p>4 A. No, I did not.</p> <p>5 Q. Okay. Have you ever attended a wedding at a</p> <p>6 church?</p> <p>7 A. No.</p> <p>8 Q. Have you ever attended anything at a church?</p> <p>9 A. No.</p> <p>10 Q. Okay. When you spoke with Samantha, your</p> <p>11 daughter, about this and asked her what do you do, what</p> <p>12 did you mean by that? What does she do when?</p> <p>13 A. I asked her what she does when she's at events</p> <p>14 such as dinners of her cross country team at the school</p> <p>15 when they offer a prayer, and I asked her what she does</p> <p>16 during those events when they ask you to do that, to</p> <p>17 pray.</p> <p>18 Q. So then am I understand to that you knew that</p> <p>19 they offered prayers at these other events?</p> <p>20 A. Samantha had begin to -- begun to come home and</p> <p>21 complain and question why they were doing it. So I</p> <p>22 became aware that it was going on more often than what</p> <p>23 I knew from my own experience of being a student in the</p> <p>24 school district.</p> <p style="text-align: center;">41</p>	<p>1 Q. Okay. So she hadn't complained while she was in</p> <p>2 elementary school and middle school?</p> <p>3 A. I'm unsure.</p> <p>4 Q. Okay. But you are sure that she complained</p> <p>5 during the time period 2000 and 2004?</p> <p>6 A. That's correct.</p> <p>7 Q. Okay. Do you recall whether you had ever gone</p> <p>8 to a School Board meeting prior to 2000?</p> <p>9 A. I'm unsure.</p> <p>10 Q. Okay. But the School Board meetings that you do</p> <p>11 recall going to occurred at some time between 2000 and</p> <p>12 2004? Let me -- I'll rephrase that.</p> <p>13 I know you attended School Board meetings</p> <p>14 through Board meeting notes and things like that, at the</p> <p>15 earliest June 15th of 2004?</p> <p>16 MR. ALLINGHAM: Do you mean your earliest</p> <p>17 knowledge is as of June 15th, 2004?</p> <p>18 MR. SHAW: That's right, and I'm just</p> <p>19 trying to figure out what other meetings you may have</p> <p>20 attended and what happened at those meetings. So I'm</p> <p>21 trying to pare down the years a little bit considering</p> <p>22 now we have a gap of 2000 to 2004, okay.</p> <p>23 THE WITNESS: Okay.</p> <p>24 BY MR. SHAW:</p> <p style="text-align: center;">43</p>
<p>1 Q. Had you ever gone to School Board meetings</p> <p>2 before Samantha came home and complained about the</p> <p>3 different things that you just talked about?</p> <p>4 A. Yes.</p> <p>5 MR. ALLINGHAM: Would you just read the</p> <p>6 question back for me, please?</p> <p>7 BY MR. SHAW:</p> <p>8 Q. I'll rephrase the question, Tom.</p> <p>9 You just testified that Samantha began to</p> <p>10 come home and complain about School Board meetings</p> <p>11 that correct?</p> <p>12 A. No.</p> <p>13 Q. No, excuse me, complain about different events</p> <p>14 at school where people prayed, is that correct?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. Let's do it this way. When did Samantha</p> <p>17 begin high school?</p> <p>18 A. She graduated in 2004. You begin high school --</p> <p>19 Q. In '97?</p> <p>20 A. Ninth grade.</p> <p>21 Q. No, 2000 rather. In that time -- when did she</p> <p>22 -- was she in high school when she began to come home</p> <p>23 and complain about prayer at different activities?</p> <p>24 A. Yes.</p> <p style="text-align: center;">42</p>	<p>1 Q. So do you recall when you may have attended</p> <p>2 School Board meetings between those timeframes while</p> <p>3 Samantha was in high school?</p> <p>4 A. I know I attended a School Board meeting where</p> <p>5 it had something to do with can donations where we had</p> <p>6 donated cans for Alexander's classroom, and his</p> <p>7 classroom had the most donations and our family had the</p> <p>8 most donations so we went to a School Board meeting.</p> <p>9 I think he was in first grade.</p> <p>10 Q. Okay.</p> <p>11 A. It might have been third grade. I'm not sure.</p> <p>12 Or second grade.</p> <p>13 Q. Okay. And how many years older is Samantha than</p> <p>14 Alex?</p> <p>15 A. Alex was born in '92 and Samantha was born in</p> <p>16 '86. Samantha was born September of '86. Alex was born</p> <p>17 in July of '92. No. Samantha was born in July of '86,</p> <p>18 and Alex was born in September of '92.</p> <p>19 Q. Okay. Alex was born in September of 1992?</p> <p>20 A. Correct.</p> <p>21 Q. Samantha, July of '86?</p> <p>22 A. Correct.</p> <p>23 Q. So we can agree that they're approximately six</p> <p>24 years apart, depending on the month?</p> <p style="text-align: center;">44</p>

TAB 6

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<p style="text-align: center;">C O N F I D E N T I A L IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE</p> <p>MONA DOBRICH and MARCO) CONFIDENTIAL DOBRICH, Individually and) as parents and next friend) of ALEXANDER DOBRICH,) SAMANTHA DOBRICH, JANE DOE) and JOHN DOE, Individually) and as parents and next) friend of JORDAN DOE and) JAMIE DOE,)</p> <p style="text-align: center;">Plaintiffs,) v.) Civil Action INDIAN RIVER SCHOOL,) No. 05-120 DISTRICT, et al.,)</p> <p style="text-align: center;">Defendants.)</p> <p>Deposition of JANE DOE, taken pursuant to notice at Drinker, Biddle & Reath, 1100 North Market Street, Suite 1000, Wilmington, Delaware, beginning at 1:30 p.m., on Tuesday, December 5, 2006, before Terry Barbano Burke, RMR-CRR and Notary Public.</p> <p>APPEARANCES: THOMAS J. ALLINGHAM, II, ESQUIRE One Rodney Square Wilmington, Delaware 19801 For the Plaintiff WILCOX & FETZER 1330 King Street - Wilmington, Delaware 19801 (302) 655-0477</p> <p style="text-align: center;">1</p>	<p>1 testified as follows:</p> <p>2 BY MR. SHAU:</p> <p>3 Q. Let me just add, Mrs. Doe, I'm going to</p> <p>4 attempt to try to ask questions that won't lead you</p> <p>5 down the path of saying your name or your children's</p> <p>6 names, but in the event that I do, don't worry about it</p> <p>7 and we will be able to remedy it later.</p> <p>8 A. Okay.</p> <p>9 Q. My name is Jarrod Shau, and I represent the</p> <p>10 defendants in this action.</p> <p>11 I am going to ask you a bunch of</p> <p>12 questions about various things that have occurred, and</p> <p>13 I ask that if you don't understand the question, you</p> <p>14 ask me to rephrase it, or if you don't hear it, you ask</p> <p>15 me to ask it again.</p> <p>16 If you answer the question as it's asked</p> <p>17 on the record, it's going to look like you understood</p> <p>18 the question.</p> <p>19 A. Uh-huh.</p> <p>20 Q. So if you need for me to repeat it or rephrase</p> <p>21 it, please ask me to and I will be happy to.</p> <p>22 One other thing is the court reporter</p> <p>23 can't see uh-huh or when you shake your head, so if you</p> <p>24 could answer affirmatively or negatively, however you</p> <p style="text-align: center;">3</p>
<p>2 APPEARANCES (cont'd):</p> <p>3 JARROD SHAU, ESQUIRE</p> <p>4 Drinker, Biddle & Reath, LLP</p> <p>5 One Logan Square</p> <p>6 18th and Cherry Streets</p> <p>7 Philadelphia, Pennsylvania 19103-6996</p> <p>8 For the Defendants</p> <p>9 ALSO PRESENT:</p> <p>10 TIMOTHY KEARNS</p> <p>11 - - -</p> <p>12 MR. ALLINGHAM: While we were off the</p> <p>13 record, Mr. Shau and I agreed that we would all try to</p> <p>14 refer to the witness by her pseudonym of Jane Doe and</p> <p>15 to members of her family by the pseudonyms given ther</p> <p>16 in the complaint.</p> <p>17 We have also agreed, and I want to</p> <p>18 express my appreciation to Mr. Shau for this</p> <p>19 suggestion, that we will each, to the extent anyone</p> <p>20 slips up, we can substitute the appropriate pseudonym</p> <p>21 in the final transcript so the anonymity of the witness</p> <p>22 and the members of her family will again be preserved,</p> <p>23 and I again appreciate that.</p> <p>24 JANE DOE,</p> <p>the deponent herein, having first been</p> <p>duly sworn on oath, was examined and</p> <p style="text-align: center;">2</p>	<p>1 choose, that would be appreciated by the court</p> <p>2 reporter.</p> <p>3 A. Okay.</p> <p>4 Q. If you need to take a break at any point, just</p> <p>5 let me know, we can stop whenever you want. If you</p> <p>6 want water or to use the rest room, please let me know.</p> <p>7 Mrs. Doe, have you ever been deposed</p> <p>8 before?</p> <p>9 A. No.</p> <p>10 Q. What did you do to prepare for this</p> <p>11 deposition?</p> <p>12 A. Spoke with my lawyer.</p> <p>13 Q. Your lawyer, Mr. Allingham?</p> <p>14 A. Yes.</p> <p>15 Q. When did you speak with Mr. Allingham?</p> <p>16 A. Thursday.</p> <p>17 Q. Did you review any documents during that</p> <p>18 preparation?</p> <p>19 A. No.</p> <p>20 Q. Have you spoken with anyone else regarding</p> <p>21 your deposition today?</p> <p>22 A. Just my husband.</p> <p>23 Q. Mrs. Doe, what town do you currently live in?</p> <p>24 A.</p> <p style="text-align: center;">4</p> <p style="text-align: right;">REDACTED</p>

Unsigned

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<p>1 It didn't seem to us that board members were rotating. 2 Q. So after reading the policy -- 3 A. And -- 4 Q. I'm sorry, please finish. 5 A. And on No. 3, we did feel that the way the 6 board gave their prayer was proselytizing. 7 Q. I would like to ask you a few questions about 8 that. 9 So when you discussed it, you felt that 10 some of the board prayers that you had heard in the 11 past were proselytizing? 12 A. Yes. If proselytizing is to advance one 13 particular religion, is that what we agree on? 14 Q. If that's your definition, that's fine. 15 A. Then, yes, that would be the case. 16 Q. And it's accurate to say you had only attended 17 two board meetings at the time you reviewed this 18 policy? 19 A. Right. 20 Q. Did the board prayer at those -- 21 A. I'm sorry. I forgot one of the board 22 meetings. Can we go back? 23 Q. Sure. 24 A. The August 24th school board meeting.</p> <p style="text-align: center;">13</p>	<p style="text-align: center;">REDACTED</p> <p>1 Q. 2 a prayer? 3 A. Yes. 4 Q. Do you remember who gave that prayer? 5 A. There was a gentleman, I believe it was 6 Reginald Helms, or it could have been John Evans. I'm 7 not sure exactly. 8 Q. Do you remember what that prayer was? 9 A. Yes. 10 Q. Do you remember the exact words of the prayer? 11 A. I remember the exact words of the end of the 12 prayer, "and in Jesus' name we pray." 13 Q. Before the prayer started, did Mr. Evans or 14 Mr. Helms, whomever gave the prayer, ask you to bow 15 your head? 16 A. I believe so, but I can't be sure. 17 Q. So you don't remember whether or not he did? 18 A. I know that we had been asked to bow our head 19 before and I'm not sure if that was the meeting. 20 Q. Were you asked to bow your head at the August 21 24th, 2004 meeting? 22 A. I can't recall specifically. 23 Q. Is it fair to say you don't remember any 24 specific instance of you being asked to bow your head,</p> <p style="text-align: center;">15</p>
<p>1 Q. August 24? 2 A. Uh-huh. 3 Q. Did you sign in at the August 24th, 2004 board 4 meeting? 5 A. No, I did not. 6 Q. But you did attend the August 24th, 2004 board 7 meeting? 8 A. Yes. 9 Q. Did Mr. Doe attend that meeting? 10 A. No. 11 Q. Did either Jamie or Jordan attend that 12 meeting? 13 A. No. 14 Q. So I'll rephrase. 15 At the time you thought the board was, 16 I'll use your word, advancing religion -- 17 A. Uh-huh. 18 Q. -- through prayer, you had heard three prayers 19 at board meetings? 20 A. Well, I can't recall in 1998. 21 Q. So in 1998 you don't recall that there was a 22 prayer said? 23 A. I don't recall. I might have, you know, 24 gotten there afterwards. I just can't recall.</p> <p style="text-align: center;">14</p>	<p>1 you just generally remember that occurring at one of 2 the meetings you attended? 3 A. My recollection is that the impression given 4 was to bow your head for the prayer, but I can't recall 5 exactly whether we were specifically asked to bow our 6 heads. But I do remember bowing of heads. 7 Q. So it may have been just everyone in the area 8 bowed their heads and it just felt like you should have 9 bowed your head? 10 A. That may be. 11 Q. Did you bow your head during the prayer? 12 A. No. 13 Q. Did you feel like you had to bow your head 14 during the prayer? 15 A. Well, I'm not sure what you mean by "had to." 16 Can you rephrase that? 17 Q. Sure. 18 Even though you didn't bow your head, 19 did you feel any pressure? 20 A. Yes. 21 Q. However, you decided that you weren't going to 22 bow your head? 23 A. Correct. 24 Q. Why did you feel pressured to bow your head</p> <p style="text-align: center;">16</p>

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<p>1 even though you didn't?</p> <p>2 A. Well, I think what you describe as pressure is</p> <p>3 exactly right, it's peer pressure, you know, to bow</p> <p>4 your head. Everyone's bowing their head, so you would</p> <p>5 stand out if you didn't.</p> <p>6 Q. Did anybody say anything to you about you not</p> <p>7 bowing your head?</p> <p>8 A. No. REDACTED</p> <p>9</p> <p>10 Mr. Helms or Mr. Evans gave the prayer and ended "in</p> <p>11 Jesus' name," how did that make you feel?</p> <p>12 REDACTED</p> <p>13 it made us feel uncomfortable and excluded. And that</p> <p>14 perhaps the board -- well, that's it.</p> <p>15 Q. Do you remember the prayer that was given at</p> <p>16 the August 24th, 2004 meeting?</p> <p>17 A. Yes.</p> <p>18 Q. Who gave that prayer?</p> <p>19 A. Donald Hattier.</p> <p>20 Q. Do you remember that prayer?</p> <p>21 A. Yes.</p> <p>22 Q. Were there any religious indications in that</p> <p>23 prayer?</p> <p>24 MR. ALLINGHAM: I object to the form of</p> <p style="text-align: center;">17</p>	<p>1 given whatever he said without any of that, would you</p> <p>2 have found it to be advancing religion?</p> <p>3 A. Yes.</p> <p>4 Q. Would you have still found it to be a</p> <p>5 Christian prayer?</p> <p>6 REDACTED</p> <p>7</p> <p>8 Q. He didn't reference Jesus, though, did he?</p> <p>9 A. Well, it was a long prayer and I do not think</p> <p>10 it did reference Jesus.</p> <p>11 Q. You mentioned before that Paragraph 3 you felt</p> <p>12 that the board did use the prayer to proselytize or</p> <p>13 advance religion. When you were discussing the prayer</p> <p>14 with your husband, did you find anything objectionable</p> <p>15 about the policy?</p> <p>16 A. About this?</p> <p>17 Q. Yes, about what's in front of you, PX-9?</p> <p>18 A. Not that I can recall.</p> <p>19 Q. I'd like to take a few moments to go through</p> <p>20 the policy with you now paragraph by paragraph and</p> <p>21 discuss different aspects about it.</p> <p>22 Paragraph 1 reads, "In order to</p> <p>23 solemnify its proceeding, the board of education may</p> <p>24 choose to open its meetings with a prayer or moment of</p> <p style="text-align: center;">19</p>
<p>1 the question. You can answer.</p> <p>2 THE WITNESS: It mentioned God.</p> <p>3 BY MR. SHAU:</p> <p>4 Q. Were you offended by Dr. Hattier's prayer?</p> <p>5 A. I'm not exactly sure what you mean by</p> <p>6 offended.</p> <p>7 Q. How did Dr. Hattier's prayer make you feel?</p> <p>8 A. I would say the same as the other board</p> <p>9 meeting prayer.</p> <p>10 Q. It made you feel --</p> <p>11 A. That it was promoting religion.</p> <p>12 Q. How did it make you feel like it was promoting</p> <p>13 religion?</p> <p>14 A. Well, it was a school board meeting and</p> <p>15 REDACTED</p> <p>16 Q. What religion did it promote?</p> <p>17 A. Well, due to the numerous signs around the</p> <p>18 room of people promoting Christianity and shouting amen</p> <p>19 and hallelujah, I would say that it promoted</p> <p>20 Christianity.</p> <p>21 Q. Let's try and take for a moment all of the</p> <p>22 people in the crowd with their signs and shouting amen,</p> <p>23 act as though it didn't happen, although it did.</p> <p>24 If Dr. Hattier had given his prayer or</p> <p style="text-align: center;">18</p>	<p>1 silence, all in accord with the freedom and conscious</p> <p>2 of the individual adult board member."</p> <p>3 Would it be okay with you if the board</p> <p>4 of education opened its meetings with a moment of</p> <p>5 silence?</p> <p>6 MR. ALLINGHAM: I object to the form of</p> <p>7 the question.</p> <p>8 You can answer.</p> <p>9 THE WITNESS: It would be okay with me.</p> <p>10 It wouldn't be my preference.</p> <p>11 BY MR. SHAU:</p> <p>12 Q. But you would be able to tolerate that?</p> <p>13 A. Uh-huh.</p> <p>14 Q. Would it be acceptable to you if the board</p> <p>15 opened with a prayer in God's name?</p> <p>16 MR. ALLINGHAM: I object to the form of</p> <p>17 the question.</p> <p>18 BY MR. SHAU:</p> <p>19 Q. You can answer the question.</p> <p>20 A. I'm sorry, would it be objectionable if it</p> <p>21 opened in God's name, is that the question?</p> <p>22 Q. Yes. To you?</p> <p>23 A. Yes.</p> <p>24 Q. Why?</p> <p style="text-align: center;">20</p>

TAB 7

Evans. John (Video) 10/18/2006 9:13:00 AM

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE 3 MONA DOBRICH and MARCO : C.A. No. 15-120 (J. 4 DOBRICH, Individually and : 5 as parents and next friend : 6 of ALEXANDER DOBRICH, : 7 SAMANTHA DOBRICH, JANE DOE : 8 and JOHN DOE, Individually : 9 and as parents and next : 10 friend of JORDAN DOE and : 11 JAMIE DOE, : 12 Plaintiffs, : 13 v. : 14 INDIAN RIVER SCHOOL : 15 DISTRICT, et al., : 16 Defendants. : 17 Videotaped Deposition of JOHN M. EVANS, 18 taken pursuant to notice, on Wednesday, October 18, 19 2006 at 9:13 a.m. at 31 Hosler Street, Selbyville, 20 Delaware, reported by Lorena J. Hartnett, a Registered 21 Professional Reporter and Notary Public. 22 APPEARANCES: : 23 THOMAS ALLINGHAM, ESQUIRE 24 RICHARD HORVATH, ESQUIRE 25 BRIAN LENHARD, ESQUIRE 26 One Rodney Square 27 Wilmington, DE 19801 28 Attorney for the Plaintiff 29 30 WILCOX & FETZER 31 1330 King Street - Wilmington, DE 19801 32 (302) 655-0477 33 www.wilfet.com</p>	<p>1 2 3 TABLE OF CONTENTS 4 TESTIMONY OF JOHN M. EVANS: 5 Direct Examination by Mr. Allingham. 3 6 Certificate of Reporter 168 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>
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<p>1 2 APPEARANCES (CONTINUED): 3 JARROD SHAU, ESQUIRE 4 Drinker, Biddle & Reath, LLP 5 One Logan Square 6 18th and Cherry Streets 7 Philadelphia, PA 19103-6996 8 Attorney for the Defendants 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>1 VIDEOGRAPHER: Okay. This is the 2 videotaped deposition of John M. Evans taken 3 by the plaintiffs in the matter of Dobrich 4 et al. versus Indian River School District, 5 et al., Civil Action Number 15-120. 6 The deposition is taking place at 31 7 Hosier Boulevard in Selbyville, Delaware, on 8 October 18, 2006 at approximately 9:13 a.m.. 9 The court reporter is Lorena Hartnett from 10 the firm of Wilcox and Fetzer. 11 My name is Mark Buckmaster, a video 12 specialist from Discovery Video Services 13 Incorporated in association with Wilcox and 14 Fetzer. Counsel will now introduce 15 themselves and the reporter will swear in 16 the witness. 17 MR. ALLINGHAM: My name is Tom 18 Allingham. I represent the plaintiffs, and 19 with me are Richard Horvath and Brian 20 Lenhard. 21 MR. SHAU: My name is Jarrod Shaw, and 22 I represent the defendants. 23 24</p>
2	4

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<p>1 Q. Is it your view, as a board member, that the 2 words "in order to solemnify its proceedings" are the 3 functional equivalent of the words "in order to seek 4 God's guidance for the decisions to be made at that 5 meeting."?</p> <p>6 A. I believe that, yes.</p> <p>7 Q. Okay. And I forgot to say at the beginning 8 of the deposition, it's really important for the court 9 reporter, in particular, that we don't trample on each 10 other's questions and answers. It's the way we all 11 have conversations, but we need to have a specialized 12 sequential conversation in the depositions. Okay?</p> <p>13 A. I understand.</p> <p>14 MR. ALLINGHAM: So could I have the 15 last question and answer read back? 16 (The reporter read back the last 17 question and answer.) 18 BY MR. ALLINGHAM: 19 Q. Okay. So that at least at, for your 20 understanding as a board member of the Policy BDA.1 21 which we have in front of us, it doesn't matter 22 whether the policy says, "in order to solemnify its 23 proceedings" or whether the policy says, "in order to 24 seek God's guidance, will, protection and grace," the</p> <p style="text-align: center;">41</p>	<p>1 Q. And what prompted the board's consideration 2 of that issue was Mrs. Dobrich's expression of 3 concerns that began with the graduation prayer in 4 early summer of 2004; correct?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Let me show you what we have marked as 7 PX15. When I say PX, it's short for plaintiff's 8 exhibit.</p> <p>9 A. Okay.</p> <p>10 Q. When we do that, that enables someone looking 11 at the transcript to be able to reconstruct what 12 document we were looking at.</p> <p>13 If you look at the last page of PX15, you 14 will see Mrs. Hobbs' signature. Actually, it's a 15 signature stamp, but it's meant to be Mrs. Hobbs' 16 signature; correct?</p> <p>17 A. Yes.</p> <p>18 Q. And does that tell you that these are the 19 final minutes of the June 15, 2004 board meeting?</p> <p>20 A. Yes.</p> <p>21 Q. All right. You are recorded as being present 22 under roll call on the first page?</p> <p>23 A. Yes, I am.</p> <p>24 Q. And do you recall that you were present at</p> <p style="text-align: center;">43</p>
<p>1 meaning would be the same?</p> <p>2 A. Yes, to me it would.</p> <p>3 Q. Okay. Did anyone suggest at anytime in the 4 consideration of this policy that the policy ought to 5 say, "in order to seek God's guidance, will, 6 protection and grace."?</p> <p>7 A. I don't remember.</p> <p>8 Q. Do you remember any discussion at all of the 9 purpose articulated in the board prayer policy, that 10 is, quote, "in order to solemnify its proceedings."?</p> <p>11 A. Would you repeat that, please?</p> <p>12 Q. Yes, do you remember anyone discussing the 13 purpose of the policy at anytime during the board 14 meetings?</p> <p>15 A. I don't recall, no, I don't recall.</p> <p>16 Q. Let's make my question a little more 17 specific. Do you recall anyone offering any comment 18 whatsoever on the language, "in order to solemnify its 19 proceedings"?</p> <p>20 A. I don't recall.</p> <p>21 Q. When did the board first, first begin to 22 consider the issue of school board prayer?</p> <p>23 A. When it began to first consider it? It would 24 have been sometime in the summer of 2004.</p> <p style="text-align: center;">42</p>	<p>1 the June 15, 2004 school board meeting at North 2 Georgetown Elementary School in the cafeteria?</p> <p>3 A. Yes.</p> <p>4 Q. Now, this would have been the first board 5 meeting after the 2004 graduation; is that right?</p> <p>6 A. That's correct.</p> <p>7 Q. If you will turn to page two of the minutes, 8 you will see under the public comments section that 9 one person made a public comment, and that's 10 Mrs. Dobrich; is that right?</p> <p>11 A. Yes, I see that.</p> <p>12 Q. And what the minutes record is that 13 "Mrs. Dobrich, a parent of the Jewish faith, expressed 14 concern about prayers at the school district events. 15 She asked that the board consider using a 16 nondenominational prayer that would be appropriate for 17 all faiths at events such as graduations, etcetera."</p> <p>18 Do you see that?</p> <p>19 A. Yes, I do.</p> <p>20 Q. Do you recall Mrs. Dobrich making that 21 comment?</p> <p>22 A. I recall Mrs. Dobrich being there, but I 23 can't recall her specific statement, but I assume the 24 board minutes would record such.</p> <p style="text-align: center;">44</p>

TAB 8

Hastings, Gregory (Video) 10/13/2006 9:07:00 AM

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE 3 4 MONA DOBRICH and MARCO DOBRICH, Individually 5 as parents and next friend of ALEXANDER DOBRICH, 6 SAMANTHA DOBRICH, JANE DOE and JOHN DOE, 7 individually and as parents and next friend of 8 JORDAN DOE and JAMIE DOE, 9 Plaintiffs 10 11 vs. Civil Action 12 NO. 15-120 13 INDIAN RIVER SCHOOL DISTRICT, ET AL., 14 Defendants 15 16 Deposition of GREGORY HASTINGS, taken 17 pursuant to notice at the Indian River School 18 District, 31 Hosler Street, Selbyville, Delaware, 19 beginning at 9:07 a.m. on October 13, 2006 before 20 David A. Sroka, Registered Professional Reporter and 21 Notary Public. 22 APPEARANCES: 23 24 THOMAS ALLINGHAM, ESQ. RICHARD HORVATH BRIAN LENHARD P.O. Box 636 Wilmington, Delaware 19899-0636 For the Plaintiffs JARROD D. SHAW, ESQ. Drinker Biddle & Reath, LLP One Logan Square Philadelphia, Pennsylvania 19103-6996 For the Defendants</p>	<p>1 GREGORY HASTINGS, 2 The Witness herein, called for examination by 3 the Plaintiffs, having been duly sworn to tell the 4 truth, the whole truth, and nothing but the truth, 5 was examined and testified as follows: 6 EXAMINATION BY MR. ALLINGHAM: 7 Q. Good morning, Mr. Hastings. I am going to 8 ask you to clear up something that has been bugging 9 me. Is it H-O-S-I-E-R or H-O-O-S-I-E-R? Is it 10 pronounced Hoosler or Hosler? 11 A. In this area we pronounce it Hosler. 12 Q. Do you know how it's spelled? 13 A. I believe it's one O. 14 Q. Thanks. Have you ever been deposed before? 15 A. Yes, I have, yes. 16 Q. In what context? 17 A. As a defendant. 18 Q. What kind of a case? 19 A. It was a teacher in our high school and 20 there was -- she brought on a suit, I have to 21 reflect, this has been 12 years, I guess. 22 Q. All right, I don't need that much detail. 23 That was a suit by a teacher? 24 A. Yes.</p> <p style="text-align: center;">3</p>
<p>1 MS. DUPHILY: This is the 2 videotape deposition of Mr. Greg Hastings, 3 taken by the Plaintiff, in the 4 matter of Dobrich, et al. versus Indian 5 River School District, at al., case 6 number 15-120. 7 The deposition is taking place at 31 8 Hosler Boulevard, Selbyville, Delaware. We 9 are going on the record on October 13, 10 2006 at approximately 9:07 a.m.. The court 11 reporter is Dave Sroka from the firm of 12 Wilcox & Fetzer. My name is Lindsay 13 duPhily and I am with Discovery Video 14 Services in association with Wilcox & 15 Fetzer. 16 I will now ask counsel to 17 identify themselves on the record, and then 18 the court reporter will swear in the 19 witness. 20 MR. ALLINGHAM: I am Tom Allingham 21 representing the Plaintiffs. With me are 22 Rick Horvath and Brian Lenhard. 23 MR. SHAW: Jarrod Shaw 24 representing the defendants.</p> <p style="text-align: center;">2</p>	<p>1 Q. And it was against you in your capacity as 2 a School Board member? 3 A. Capacity as a School Board member? 4 Q. Yes, sir? 5 A. Yes. 6 Q. Have you ever testified at trial? 7 A. I have been an expert witness in Small 8 Claims Court, that's the extent of it. 9 Q. Did the court issue an opinion in that 10 case? 11 A. Yes. 12 Q. Were you mentioned in the opinion? 13 A. I don't believe so. 14 Q. What was your area of expertise in that 15 testimony? 16 A. I had provided architectural design for the 17 product. This has been a long time, too but -- 18 Q. Let me cut you off. It has nothing to do 19 with issues of religion in the schools, right? 20 A. No. thank you, no. 21 Q. What is your -- I am trying to keep this 22 limited to the issues here. You are employed as an 23 architect? 24 A. Yes, I own a small architectural design</p> <p style="text-align: center;">4</p>

Unsigned

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<p>1 a legislative body, has anyone expressed any 2 concerns or reservations or drawn any distinctions 3 between the General Assembly and its functions, for 4 example, and the School Board and its functions? 5 A. Not to my knowledge. 6 Q. Legislative bodies pass laws, is that 7 correct? 8 A. Yes. 9 Q. And those laws are then enforced by a 10 different branch of government, correct? 11 A. Correct. 12 Q. The School Board doesn't pass laws, but it 13 passes policies, correct? 14 A. Correct. 15 Q. Unlike the General Assembly the School 16 Board also enforces those policies, correct? 17 A. Yes. 18 Q. At any time during the discussion of 19 whether the Board was a legislative body did anyone 20 raise or discuss the fact that students are 21 consistently present at regular Board meetings? 22 A. I don't recall. 23 Q. It is a fact that at least since the mid 24 1990s students were consistently present at regular</p> <p style="text-align: center;">41</p>	<p>1 Mr. Hastings, this is a long document, you 2 take as long as you want to to read it, but my first 3 question to you is have you ever seen it before, and 4 you may be able to answer that question without 5 reading the whole document? 6 A. I may have, but I can't recall. It's been 7 two years. 8 Q. If you look at the fourth page of the 9 exhibit? 10 A. Uh-hum. 11 Q. You will see there are five numbered 12 paragraphs at the bottom of the page, the fifth one 13 of which carries over to the next page. With some 14 extremely minor language changes can you confirm 15 that the five numbered paragraphs on PX12 are 16 essentially identical to the numbered paragraphs of 17 the final Board policy? The only change I can tell 18 you is I know that there is in paragraph four just 19 is changed to only, but apart from that do you see 20 any other changes? 21 A. No. 22 Q. Do you know who drafted PX12? 23 A. I suspect the Neuberger firm. 24 Q. It says up at the top left the Rutherford</p> <p style="text-align: center;">43</p>
<p>1 Board meetings? 2 A. Yes. 3 Q. And so when you walk into the Board meeting 4 or walk out to take your seat on the stage or where 5 ever the meeting is being held, you expect that 6 students will be in the audience? 7 A. Most generally, yes. 8 Q. Sometimes it's only half a dozen students, 9 maybe it's just the ROTC color guard? 10 A. Yes. 11 Q. Sometimes, I've seen some minutes where it 12 looked like there were 50 or more students there, is 13 that right? 14 A. Yes. 15 Q. Can you think of any regular Board meeting 16 where there have been no students present? 17 A. Probably in the summer months. 18 Q. Oh, I should have been clear about my 19 question. Can you think of any regular Board 20 meeting during the academic year when students were 21 not present? 22 A. No. 23 Q. All right, I am going to show you another 24 exhibit, this is PX12.</p> <p style="text-align: center;">42</p>	<p>1 Institute and the Neuberger firm, is that the basis 2 for your answer? 3 A. Yes. 4 Q. Did anyone ever tell you that the board 5 policy as it was presented to you for a first 6 reading on September 28th had been drafted by the 7 Neuberger firm? 8 A. I can't recall. 9 Q. In an earlier answer you told me that your 10 normal process is to have Board policies checked by 11 the Board attorney, correct? 12 A. Yes. 13 Q. In the summer and fall of 2004 who was the 14 Board's attorney? 15 A. If memory serves me correctly it was Jim 16 Griffin. 17 Q. Do you know whether anyone on the Board or 18 the policy committee asked Mr. Griffin to 19 participate in the drafting of the Board policy on 20 School Board prayer? 21 A. I don't want to assume, I know what happens 22 when you assume, but knowing our procedure and the 23 policy committee I would -- sitting here today I 24 would to -- that was the normal procedure, that it's</p> <p style="text-align: center;">44</p>

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<p>1 from the microphone, stop talking?</p> <p>2 A. Another member of the Board other than the</p> <p>3 president?</p> <p>4 Q. Yup.</p> <p>5 A. It may have occurred, but I don't recall</p> <p>6 any particular date or time.</p> <p>7 Q. The last 20 minutes or half an hour we've</p> <p>8 talked about the atmosphere or the overall ambience</p> <p>9 of the meeting, which you characterized as a little</p> <p>10 disturbing, there were outbursts, the crowd</p> <p>11 mentality, or mob mentality, the crowd got a little</p> <p>12 unruly. I showed you the Johnson comments and the</p> <p>13 crowd's reaction both to that with cheers and with</p> <p>14 laughter during his comments. I showed the clip of</p> <p>15 the announcement that the meeting would open with a</p> <p>16 prayer and the raucous reaction to that.</p> <p>17 Do you have a view as to whether the prayer</p> <p>18 given on August 24th was effective to make the crowd</p> <p>19 solemn, respectful and courteous?</p> <p>20 MR. SHAW: I am going to object,</p> <p>21 I don't think you showed him the prayer</p> <p>22 that day.</p> <p>23 MR. ALLINGHAM: I didn't and</p> <p>24 that's not what I said.</p> <p style="text-align: center;">101</p>	<p>1 says in order to solemnify the proceedings, what do</p> <p>2 you understand that to mean?</p> <p>3 A. Well, given the responsibility of a Board</p> <p>4 member, and particularly as I know it to be in this</p> <p>5 particular school district, because geographically</p> <p>6 we are the largest in the state, and we have many</p> <p>7 buildings, so the whole facet of our charge</p> <p>8 obviously there are a lot of decisions to be made</p> <p>9 and sometimes they are very controversial, sometimes</p> <p>10 very testy, and also looking at the bigger picture</p> <p>11 there is a lot of financial issues at stake.</p> <p>12 So, sitting there as a member of the Board</p> <p>13 one hopes, or I hope, that I make the very best</p> <p>14 decision I possibly can for the sake of the district</p> <p>15 and the children in the school district, and I want</p> <p>16 all the help that I can get.</p> <p>17 Q. When you say, "I want all the help that I</p> <p>18 can get," that means that if you can invoke some</p> <p>19 divine guidance to guide your judgment that would be</p> <p>20 helpful?</p> <p>21 A. That's correct.</p> <p>22 Q. Is it necessary to offer a prayer publicly</p> <p>23 in order to invoke divine guidance for those</p> <p>24 judgments?</p> <p style="text-align: center;">103</p>
<p>1 A. I don't recall what the prayer was that</p> <p>2 particular Board meeting.</p> <p>3 Q. I am going to start the question again. It</p> <p>4 doesn't matter what the payer was a prayer was</p> <p>5 offered at the meeting, correct?</p> <p>6 A. Yes.</p> <p>7 Q. And based on the conduct at that meeting</p> <p>8 which I summarized a minute ago, do you think</p> <p>9 whatever the pryer was, do you think it was</p> <p>10 effective to solemnize the proceedings?</p> <p>11 A. I believe it was for the individuals of the</p> <p>12 Board and the purpose it's given, yes.</p> <p>13 Q. Okay, and that's very helpful because I</p> <p>14 wanted to ask you, is the solemnization, which is</p> <p>15 the purpose of the prayer, as the policy reflects,</p> <p>16 is that solemnization directed to the Board members</p> <p>17 and their discharge of their duties, or is it</p> <p>18 intended to affect everybody in the audience?</p> <p>19 A. In my opinion it's for the immediate</p> <p>20 members of the Board.</p> <p>21 Q. Okay. And when the policy says in order to</p> <p>22 solemnize the proceedings, and you've now told me</p> <p>23 that's the intended recipient of the solemnization,</p> <p>24 if you will, are the Board members, when the policy</p> <p style="text-align: center;">102</p>	<p>1 A. I don't suppose it's necessary, no.</p> <p>2 Q. You mentioned the financial issues, does</p> <p>3 the Board deliberate over financial issues in</p> <p>4 regular session or in executive session?</p> <p>5 A. All financial issues are deliberated in</p> <p>6 regular session.</p> <p>7 Q. I forgot to ask you a question about</p> <p>8 Mr. Johnson, and the clip I showed you. Would you</p> <p>9 agree with me that members of the Board greeted</p> <p>10 Mr. Johnson warmly when he came to the podium?</p> <p>11 A. None of us got up and shook his hand.</p> <p>12 Q. No, sir and that's -- fair enough. You</p> <p>13 recall somebody made a joke about calling him Earl</p> <p>14 Johnson?</p> <p>15 A. Do I recall it, no, no.</p> <p>16 Q. In the stack there you have PX9 which is</p> <p>17 the actual Board Policy which says, the policy</p> <p>18 opens, it's first phrase is, "In order to solemnify</p> <p>19 its proceedings the Board of Education may choose to</p> <p>20 open its meetings with a prayer or moment of</p> <p>21 silence." Is there any other purpose for the prayer</p> <p>22 or moment of silence other than to solemnify the</p> <p>23 Board's proceedings, as you've defined that?</p> <p>24 A. No.</p> <p style="text-align: center;">104</p>

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<p>1 Q. A couple of questions again about the 2 August 24th Board meeting but you won't have to make 3 judgments, at least not as many judgments as I asked 4 you about before. Do you recall that state 5 representatives Hocker and Atkins spoke at the 6 meeting? 7 A. Yes. 8 Q. And do you recall that they were joined at 9 the podium by representative Ewing? 10 A. I believe so, yes. 11 Q. And did -- do you recall that the 12 representatives provided or read a letter during 13 their public comment section of the meeting? 14 A. Yes. 15 Q. And do you recall that that letter said 16 that they as representatives could not recognize the 17 separation of God from state? 18 A. Maybe. I can't recall specifically. I 19 just know that they did read from a letter, but the 20 content I can't recall. 21 Q. Do you think it was appropriate that 22 representatives stood at the podium and expressed 23 their views as representatives on this issue? 24 A. I'll say it struck me strange.</p> <p style="text-align: center;">129</p>	<p>1 Q. By whom? 2 A. I can't specifically tell you. I mean in 3 the course of these two years, whether it would be 4 meeting someone on the street or after a Board 5 meeting or whatever what have you, I have to tell 6 you I've heard that sentiment but who, whom, I don't 7 know. 8 Q. More than once? 9 A. Probably. 10 Q. Would it be fair for me to understand that 11 that is a common sentiment in the Indian River 12 School District? 13 A. Yes. 14 Q. I am going to go back to a specific 15 question, have you heard anyone say, again to you 16 use your phrase, to your face, that they understand 17 the School Board Prayer Policy as protecting 18 Christian values? 19 A. Repeat it, please? 20 Q. Have you heard anyone say to your face that 21 they view the School Board Prayer Policy as 22 protecting Christian values? 23 A. No. 24 Q. Have you heard that sentiment expressed?</p> <p style="text-align: center;">131</p>
<p>1 Q. Why? 2 A. In this climate, this day and time as we 3 are sitting here knowing the delicateness of this 4 issue at hand, I was surprised two public officials 5 came forward in that light and expressed their 6 opinions, being politicians. 7 Q. Have you ever had anyone tell you that they 8 see this case as about protecting Christian prayer? 9 A. No. 10 Q. Have you ever had anyone tell you that they 11 see this case as about protecting Christian values? 12 A. You are asking me if I had someone 13 specifically in my face tell me that's what they 14 believe or that's the statement made to such? 15 Q. Yes, let me take that question first. So, 16 let's take the specific question, have you ever had 17 anyone actually say to your face that they believe 18 that this case is about protecting Christian values? 19 A. No. 20 Q. Now, let's be a little more general, have 21 you heard that sentiment expressed, or have you 22 heard that sentiment -- I'll do it in pieces. Have 23 you heard that sentiment expressed? 24 A. Yes.</p> <p style="text-align: center;">130</p>	<p>1 A. No, I don't believe so. 2 Q. So, it's the defense of this case that is 3 viewed as defending Christian values? 4 A. I believe. 5 Q. Have you discussed with anyone whether the 6 2006, the results of the 2006 School Board election 7 was an endorsement of the stance the School Board 8 has taken in support of School Board prayer? 9 A. What the result of the Board election in 10 2006? 11 Q. An endorsement of the stance the School 12 Board has taken in support of School Board prayer? 13 A. Most definitely. 14 Q. Is that also your view? 15 A. That the stance was taken as such? 16 Q. That the result was an endorsement of the 17 stance that the School Board took? 18 A. Yes. 19 Q. Have you ever discussed with anyone whether 20 someone who opposes School Board prayer could get 21 elected to the School Board in Indian River? 22 A. Interesting question. 23 Q. Let me rephrase it. Let me just ask the 24 question directly, do you believe that someone who</p> <p style="text-align: center;">132</p>

TAB 9

Hattier, Donald (Video) 10/10/2006 9:36:00 AM

<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE 3 4 MONA DOBRICH and MARCO DOBRICH, Individually 5 as parents and next friend of ALEXANDER DOBRICH, 6 SAMANTHA DOBRICH, JANE DOE and JOHN DOE, 7 individually and as parents and next friend of 8 JORDAN DOE and JAMIE DOE, 9 Plaintiffs 10 vs. Civil Action 11 No. 15-120 12 13 INDIAN RIVER SCHOOL DISTRICT, ET AL., 14 Defendants 15 16 DEPOSITION OF DONALD HATTIER, taken at th 17 Indian River School District, 31 Hosier Street, 18 Selbyville, Delaware beginning at 9:36 a.m. on 19 October 10, 2006 before David A. Sroka, Registered 20 Professional Reporter and Notary Public. 21 22 APPEARANCES: 23 24 THOMAS ALLINGHAM, ESQUIRE RICHARD HORVATH, ESQUIRE BRIAN LENHARD, ESQUIRE P.O. Box 636 Wilmington, Delaware 19899-0636 For the Plaintiffs WILCOX & FETZER 1330 King Street - Wilmington, DE 19801 (302) 655-0477 www.wilfet.com</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>1 MS. DUPHILY: This is the 2 videotape deposition of Dr. Donald G. 3 Hattier taken by the Plaintiff in the 4 matter of Dobrich, et al., versus Indian 5 River School District, et al., case number 6 15-120. This deposition is taking place at 7 31 Hosier Boulevard, Selbyville, Delaware. 8 We are going on the record on October 10, 9 2006 at approximately 9:37 a.m. 10 The court reporter is David Sroka 11 from the firm of Wilcox & Fetzer, 12 Wilmington, Delaware. My name is Lindsay 13 duPhily I'm the videotape specialist of 14 Discovery Video Services in association 15 with Wilcox & Fetzer. 16 Counsel will now introduce 17 themselves and then the court reporter will 18 swear in the witness. 19 MR. ALLINGHAM: Tom Allingham of 20 Skadden Arps. With me is Rick Horvath and 21 Brian Lenhard also of Skadden Arps, 22 representing the Plaintiffs. 23 MR. GOSSELIN: Jason Gosselin of 24 drinker Biddle & Reath representing the</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>1 defendants. 2 DONALD HATTIER, 3 The Witness herein, called for examination by 4 the Plaintiffs, having been duly sworn to tell the 5 truth, the whole truth, and nothing but the truth, 6 was examined and testified as follows: 7 MR. ALLINGHAM: Jason, I just want 8 to put a couple of things on the record. 9 The first one is, it is my impression that 10 you are not going to be interrupting 11 this deposition very much, but I want you 12 to know that if you want to make relevance 13 objections feel free. I'm not going to 14 accept invitations to explain the relevance 15 of my questions, I think that they are 16 relevant. 17 Q. Mr. Hattier, I represent the Plaintiffs in 18 this action against the district and I'm going to be 19 asking you some questions. If you don't understand 20 anything that I ask please tell me, don't answer the 21 question. If you do answer it the judge and 22 ultimately even the jury will probably assume that 23 you did understand it, so if you do have a problem 24 with a question cut me off at the pass now, okay?</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>

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<p>1 lawyers in his law firm, Drinker Biddle & Reath?</p> <p>2 A. I believe that to be true.</p> <p>3 Q. Okay. You full name is Donald G. Hattler,</p> <p>4 is that correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And you were born on October 1953?</p> <p>7 A. That is correct.</p> <p>8 Q. Were you born in Delaware?</p> <p>9 A. No, sir.</p> <p>10 Q. Where were you born?</p> <p>11 A. I was born in Triesta, Italy in the 381st</p> <p>12 infantry hospital.</p> <p>13 Q. When did you come to the United States?</p> <p>14 A. In 1962.</p> <p>15 Q. How long have you lived in Delaware?</p> <p>16 A. I was lived in Delaware since February no,</p> <p>17 I have lived her Delaware since approximately March</p> <p>18 of 1990.</p> <p>19 Q. Do you consider yourself a long time</p> <p>20 resident of Sussex County?</p> <p>21 A. I do, yes, sir.</p> <p>22 Q. Would you agree with me as a general</p> <p>23 proposition that in Sussex County information and</p> <p>24 news tends to travel by word of mouth as much as it</p> <p style="text-align: center;">21</p>	<p>1 Q. How long have you lived there?</p> <p>2 A. Since March of 1990.</p> <p>3 Q. So, you were 27 when you moved her, 26, 27,</p> <p>4 mid 20s?</p> <p>5 A. No, 30, 1990, 1953, 37, 36, 37, somewhere</p> <p>6 in there.</p> <p>7 Q. I'm sorry, right. Where did you attend</p> <p>8 college?</p> <p>9 A. I attended at the Virginia Polytechnic</p> <p>10 Institute State University, currently known as</p> <p>11 Virginia Tech.</p> <p>12 Q. And when did you graduate?</p> <p>13 A. 1975. That was for my Bachelor's in</p> <p>14 Science.</p> <p>15 Q. I assume you have some kind of MD degree?</p> <p>16 A. I have a Chiropractic Degree, that's know</p> <p>17 as a DC, Doctor of Chiropractic and that's from the</p> <p>18 National College of Chiropractic and I graduated</p> <p>19 there in December of 1985.</p> <p>20 Q. I assume that you didn't go straight to</p> <p>21 chiropractic school?</p> <p>22 A. No, sir.</p> <p>23 Q. What did you do in-between?</p> <p>24 A. In-between I ran a McDonald's for two and a</p> <p style="text-align: center;">23</p>
<p>1 does by newspaper or other formal media?</p> <p>2 A. In general terms I think that's probably</p> <p>3 true.</p> <p>4 Q. I asked you earlier about your children,</p> <p>5 you have two children, is that correct?</p> <p>6 A. I have four children, sir.</p> <p>7 Q. Four children. Would you tell me their</p> <p>8 names?</p> <p>9 A. Kristin, age 16, Georgette age 14, Hanna</p> <p>10 age 11 and Donald age eight.</p> <p>11 Q. Do they attend district schools?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Which schools do they attend?</p> <p>14 A. I have two, the oldest two are at Indian</p> <p>15 River High School at the current time. Hanna is at</p> <p>16 Selbyville Middle School and Donald is currently at</p> <p>17 the Lord Baltimore School.</p> <p>18 Q. My information may be a little stale so let</p> <p>19 me just ask you, is your current address R.D. Box</p> <p>20 114 Dagsboro?</p> <p>21 A. That was the old address before we went</p> <p>22 911.</p> <p>23 Q. So, what's he address now?</p> <p>24 A. 30682 Holts Landing Road.</p> <p style="text-align: center;">22</p>	<p>1 half years, I went to work for the State of Virginia</p> <p>2 in a power plant as a superintendent and a steam</p> <p>3 fitter, I taught motorcycle safety at the Northern</p> <p>4 Virginia Community College for a number of years,</p> <p>5 and in the process injured my spine several times.</p> <p>6 Then I was hired by IBM to work as what was called a</p> <p>7 customer engineer on fixing typewriters, mag cards,</p> <p>8 copiers and it was through that time period that I</p> <p>9 was teaching motorcycle safety and my spine kept</p> <p>10 acting up. I was slated for surgery for a sciatica</p> <p>11 case and basically discovered chiropractic. I'm</p> <p>12 single, I'm age 29, I sell my townhouse, my Cadillac</p> <p>13 I go back do college.</p> <p>14 Q. And you are employed now as a chiropractor?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Self-employed?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Is there a name of the practice or is it</p> <p>19 simply Dr. Donald G. Hattler?</p> <p>20 A. My sister and I recently formed loose</p> <p>21 partnership, we call ourselves the Beach View Health</p> <p>22 Associates. Previous to that it was the Beach View</p> <p>23 Chiropractic Center.</p> <p>24 Q. Where is your office located?</p> <p style="text-align: center;">24</p>

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<p>1 president Walls called the meeting to order and then 2 asked Dr. Hattier to give a prayer? 3 A. Yes, sir. 4 Q. Did you know in advance that a Mr. Walls 5 was going to ask you to give the prayer at that 6 meeting? 7 A. Yes, sir I did. 8 Q. How did you know that? 9 A. I volunteered. 10 Q. When did you volunteer? 11 A. It could have been the night before or at 12 some other time, I don't remember. 13 Q. And when you volunteered did you have in 14 mind the prayer that you wanted to give? 15 A. Yes, I did. 16 Q. And where did you get that prayer? 17 A. It might have been brought in partially by 18 Mr. Neuberger at some point, and again I wish I 19 could remember when he actually talked to us, I 20 don't, okay. The other thing is I went on the 21 Internet and I looked at about a half a dozen 22 historical prayers of various time periods and 23 decided on which one I felt fit the occasion the 24 best and that's what I gave.</p> <p>209</p>	<p>1 A. That is correct. 2 Q. And was that by design? 3 A. No, that's more in keeping with the way I 4 personally would pray. 5 And actually if I looked, I gave my only 6 copies of that to several reporters when they left, 7 so personally do not have a copy of it. I mean if 8 you have a copy of it I'd be happy to discuss it 9 with you. But the way George Washington and some of 10 the contemporaries of the founding fathers used 11 words like the creator of our divine providence, et 12 cetera. The way they used the words would have been 13 different that perhaps in the way we do, but it may 14 have meant exactly the same thing if you had used 15 the words Jesus Christ. So, I would have to look at 16 exactly what I said. If you guys have a copy I'd 17 love to see it. 18 Q. You brought more than one copy of the 19 prayer to the meeting? 20 A. Yes, I did. 21 Q. Was that for the purpose of distributing it 22 to reporters afterwards? 23 A. I figured somebody might want a copy of it. 24 I seem to remember bringing two. One of</p> <p>211</p>
<p>1 Q. What made you choose that particular 2 prayer? 3 A. I like to consider himself myself an 4 amateur historian. I spend enough hours at VPI so 5 that I could have a minor in history on paper. VPI 6 does not minors, however, and I have continued with 7 a love of history all of my life and I felt that 8 since this is a contentious issue that if you would 9 like to argue with somebody you can argue with 10 George Washington. If it was good enough for George 11 Washington to give then why is it not good enough 12 for me to give also. 13 Q. A rhetorical question? 14 A. A rhetorical question, yes, sir. 15 MR. GOSSELIN: You can answer it. 16 Q. The text of the prayer that you gave is not 17 in the minutes? 18 A. No. 19 Q. We have the prayer or we know the prayer 20 that you gave? 21 A. Uh-hum. 22 Q. Is it correct that that's not a prayer that 23 invokes particular religions, sorry. Your prayer 24 does not invoke the name of Jesus Christ?</p> <p>210</p>	<p>1 them I had some handwritten notes on. I go through 2 multiple drafts of things which means that I would 3 have probably brought two of them. You know, one 4 that a more rough and another one that I scribbled 5 something else on. I do recall giving them both 6 away. 7 Q. Do you know who you gave them to? 8 A. No, sir. There were quite a few people 9 there that night. 10 Q. Yes, so I understand. The minutes reflect 11 that a president Walls recommended that the agenda 12 be amended to allow 45 minutes for public comments 13 due to the large number of persons who requested to 14 speak at the meeting. That was approved 10 to 15 nothing. You voted for that, I take it? 16 A. Yes, sir. 17 Q. Was there any consideration given to 18 permitting as much time as necessary to let everyone 19 speak? 20 A. The general speaking time period is 15 21 minutes and given the large numbers of people that 22 were there, we increased it to 45 minutes which is 23 basically three times what we would normally do, and 24 then I believe we always allowed some time at the</p> <p>212</p>

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1 the next morning to do things.
 2 You know in my business because I used my
 3 hands is an issue, and that's something that I'm
 4 hoping we can resolve in a pleasant way.
 5 Q. So, there has been an increase in the
 6 number of awards given at the district level. In
 7 the other areas that I talked about, students
 8 expressing their delight or concern on particular
 9 aspects of school life, presentation of colors,
 10 performances of students, is it correct that that
 11 goes back a long time?
 12 A. As far as I know that goes back a long
 13 time.
 14 Q. So, is it fair for me to infer that the
 15 long time practice of opening School Board meetings
 16 with prayers coincides with the attendance of
 17 students at those meetings?
 18 A. Probably.
 19 Q. Have you ever heard any Board member
 20 express opposition to student involvement in Board
 21 meetings or support for limiting student involvement
 22 at Board meetings?
 23 A. Recently.
 24 Q. Who is that?

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1 A. Most I would say open with a prayer of some
 2 type, or a statement of some type because I have
 3 also used nonreligious individuals. I've made
 4 statements from Albert Einstein to open mine. I
 5 recall at least two occasions of moments of silence.
 6 And I have not made every Board meeting, I make
 7 about 11, between ten and 11 per year, so I'm not at
 8 all have them.
 9 Q. The Albert Einstein statement, have you the
 10 text of the statements or prayers that you've
 11 offered?
 12 A. I might be able to find that one because it
 13 was fairly recent.
 14 Q. Why did you pick the Albert Einstein
 15 statement?
 16 A. Because Albert Einstein in that particular
 17 one was referring to the existence of God and how
 18 that that was something that should play a role in
 19 folks' lives. And that was a good way to look
 20 beyond yourself. I can't remember the exact quote.
 21 I'm not very good at exact quotes.
 22 Q. And you obviously thought that was adequate
 23 to solemnize the proceeding?
 24 A. Absolutely.

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1 A. A lot of us simply because if there was a
 2 way we could eliminate that first half an hour, 45
 3 minutes it might get us home by 11 o'clock or 11:30.
 4 Q. Oh, that's the issue --
 5 A. Yes and that there might be a more
 6 appropriate way to handle that particular item.
 7 Others than that I'm not aware of any.
 8 Q. On the issue of the prayers that would be
 9 offered you expect to be on a rotational basis at
 10 least offered the opportunity to give prayers --
 11 A. Yes, sir.
 12 Q. -- before the Board meetings?
 13 A. Yes, sir.
 14 Q. Is it your intent to continue to use
 15 historical prayers of some kind?
 16 A. Yes, it is.
 17 Q. The policy, the School Board Prayer Policy
 18 was adopted in October of 2004, since that time has
 19 a Board member offered a prayer or moment of silence
 20 at the beginning of every meeting?
 21 A. I believe so.
 22 Q. And of those meetings can you give me a
 23 ballpark so as to how many have opened with a prayer
 24 and how many have opened with a moment of silence?

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1 Q. You told me earlier there have been
 2 instances in which a School Board member has
 3 declined to offer a prayer or lead a moment of
 4 silence?
 5 A. Yes.
 6 Q. Can you tell me which Board members did
 7 that?
 8 A. I want to say that it was probably
 9 Dr. Isaacs but I cannot say that with a sense of
 10 assurity.
 11 Q. Is there only one that you recall?
 12 A. That's it. My believe is that Mr. Bireley
 13 will set these things up in advance to give us all a
 14 chance to be prepared, and especially they know if I
 15 do it that they know that I'm going to need a good
 16 couple of days.
 17 Q. So, if Mr. Bireley sets these things up in
 18 advance how did you know that Dr. Isaacs or whoever
 19 it was had declined the opportunity?
 20 A. Because there was one Board meeting where
 21 somebody did and that was early on when we were
 22 still working non the process itself. That would
 23 have been maybe early 2005, I don't remember. It
 24 was something in that time frame.

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<p>1 which the Madelyn Murray-O'Hare comment was made?</p> <p>2 A. Not that I'm aware of. I can't tell you</p> <p>3 that.</p> <p>4 Q. Let me ask you personally, Dr. Hattier. Do</p> <p>5 you have same sympathy with the Doe's desire to</p> <p>6 remain anonymous given what happened at the August</p> <p>7 24th meeting?</p> <p>8 MR. GOSSELIN: Objection.</p> <p>9 Go ahead.</p> <p>10 A. You know, I have a sympathy for them but</p> <p>11 let me state that I actually have a high degree of</p> <p>12 respect for the Dobrich family, all right, I really</p> <p>13 do. I have a high respect for them because they</p> <p>14 believed in something and they were willing to step</p> <p>15 forward, just as I am now to defend the beliefs that</p> <p>16 I have him. All right, and I think that if somebody</p> <p>17 wishes to hide behind anonymity on an issue, you</p> <p>18 know they are doing it out of fear or whatever, but</p> <p>19 if they are right they are right.</p> <p>20 And my understanding is that the thing that</p> <p>21 the Doe family was originally complaining about,</p> <p>22 which had something to do with the Bible Club, which</p> <p>23 I was not aware of at the time period, okay there</p> <p>24 were right, we fixed it. We corrected it. Okay,</p> <p style="text-align: center;">301</p>	<p>1 Q. This can go quickly. I have some</p> <p>2 statements that you were quoted as having been to</p> <p>3 the media. I really don't want to, I don't think</p> <p>4 debate these statements just want to confirm that</p> <p>5 you were quoted accurately?</p> <p>6 A. Okay.</p> <p>7 Q. I may have a question or two but I think</p> <p>8 it's going to be --</p> <p>9 MR. ALLINGHAM: This is Hattier</p> <p>10 24. The Bates number is P104 and 105.</p> <p>11 (WHEREUPON Hattier Exhibit 24 was</p> <p>12 marked for identification)</p> <p>13 Q. There is taken from Sussex County Online.</p> <p>14 You are reported in the one, two, three four, fifth</p> <p>15 paragraph as having been, as having said,</p> <p>16 "Dr. Donald Hattier who opened last week's meeting</p> <p>17 with a prayer penned by George Washington admitted</p> <p>18 the School Board's current stance on prayer wouldn't</p> <p>19 hold up in court?"</p> <p>20 A. Incomplete quote.</p> <p>21 Q. Can you complete it for me?</p> <p>22 A. Yes. Graduation prayer. Graduation prayer</p> <p>23 and prayer at school luncheons, other things. If</p> <p>24 you compare what we were doing with the DOJ cite it</p> <p style="text-align: center;">303</p>
<p>1 and other than I personally don't see what the issue</p> <p>2 is.</p> <p>3 Q. You were personally present and observed</p> <p>4 the treatment of Alex and Samantha Dobrich at the</p> <p>5 August 24th Board meeting, correct?</p> <p>6 A. Yes.</p> <p>7 Q. Do think that the treatment of those two</p> <p>8 children at that meeting, by community members,</p> <p>9 might legitimately cause parents to be concerned</p> <p>10 about the treatment that their children would get if</p> <p>11 they relinquished anonymity?</p> <p>12 A. Yes.</p> <p>13 Q. I asked you earlier whether you are that</p> <p>14 any of your children had tried to confirm who the</p> <p>15 Does were and you said you were not aware of that?</p> <p>16 A. No, I would prefer that my children not</p> <p>17 have a clue as to who they.</p> <p>18 Q. Am I also correct that you are not aware</p> <p>19 that your wife or any member of your family has</p> <p>20 taken any action to try to confirm who the Does are.</p> <p>21 A. I would hope not.</p> <p>22 Q. This is closing the loop for the record, I</p> <p>23 would hope not means no you not area?</p> <p>24 A. Take that as a no, yes, well, whatever, no.</p> <p style="text-align: center;">302</p>	<p>1 would not hold up. Incomplete quote.</p> <p>2 Q. Okay, so you did say this but you weren't</p> <p>3 referring to the School Board prayer?</p> <p>4 A. No, I was not, I was referring to the other</p> <p>5 issues.</p> <p>6 Q. And let me just ask you the question, and</p> <p>7 are the current policies which have been adopted</p> <p>8 since that time in your have view in compliance with</p> <p>9 the Constitution?</p> <p>10 A. Lordy, I hope so.</p> <p>11 MR. ALLINGHAM: This is Hattier</p> <p>12 25. And I will tell you in advance, Dr.</p> <p>13 Hattier I have only the second page of this</p> <p>14 article from The Wave. I don't know why.</p> <p>15 It bears Bates number P122. I will see if I</p> <p>16 can find the first page.</p> <p>17 (WHEREUPON, Hattier Exhibit 25 was</p> <p>18 marked for identification)</p> <p>19 A. Yes, final paragraph.</p> <p>20 Q. Is your comment accurately reported there?</p> <p>21 A. Yes.</p> <p>22 Q. Okay?</p> <p>23 A. And again though that's based on my</p> <p>24 findings afterwards. Okay, in other words, you look</p> <p style="text-align: center;">304</p>

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<p>1 back on what the law had been or had not been, start 2 looking at the aforementioned, you know citing, and 3 as you read the court cases, so that's where the 4 decades part came in. 5 Q. Understood. 6 A. Okay. 7 MR. ALLINGHAM: This is 8 Hattier 26 bearing Bates numbers P290 9 through 293. 10 (WHEREUPON Hattier Exhibit 26 was 11 marked for identification) 12 Q. This is an August 27 article from the 13 Coastal Point? 14 A. Okay. 15 Q. If you -- 16 A. I can't even see myself in there if you can 17 help me out, please. 18 Q. If you will look at the third page, the 19 last column, the second full paragraph you will see 20 district four representative Dr. Donald Hattier, do 21 you see that? 22 A. Uh-hum. 23 Q. "Responded to further public comments on 24 the issue by stating his personal support for prayer</p> <p style="text-align: center;">305</p>	<p>1 A. Yes, I did. 2 Q. With the clarification that you have given? 3 A. Again, incomplete quote. 4 Q. And my question was just did any other 5 Board member make a comment in response to the 6 public comment section of the meeting? 7 A. Unless it's printed in here I'm going to 8 say no. And this, whatever comment I made here, who 9 is the author here, Pat Titus, Patricia Titus, this 10 probably would have been an interview that happened 11 afterwards during the break of some type. This 12 would have been a comment that would have been made 13 during the Board meeting itself. 14 Q. I have two quick questions on the report of 15 the August 24 meeting. On page two of this exhibit 16 in the second column, look at the one, two, three, 17 fourth paragraph halfway down the paragraph here is 18 a sentence that begins, at times? 19 A. Uh-hum. 20 Q. And it reads, "At times the meeting 21 resembled a prayer meeting as much as a School Board 22 meeting with choruses of amen ringing in the 23 audience after speakers declared their believe and 24 their support for prayer in the schools."</p> <p style="text-align: center;">307</p>
<p>1 but acknowledging that the Board had no expectation 2 that it would be able to win any case taken to the 3 court with a pro prayer stand. He said the Board 4 was proceeding in forming the policy under the 5 guidelines of the State Education Department and 6 with the advice of the district's legal counsel?" 7 A. Same incomplete quote. This has to be 8 again with the baccalaureate and the and graduation 9 policies. 10 Q. And did individual Board members respond to 11 the public comment section with their own views? 12 A. I don't think so. 13 Q. Other than yourself? 14 A. You mean in terms of what I am saying here? 15 Q. Yeah. 16 A. You know, based on what it is and based on 17 what's out there, this is what it is. Okay, we are 18 not going to be able to go to court and argue that 19 we should be able to have under our current policies 20 that a person should be allowed to invite a preacher 21 to come and talk to our graduation ceremonies. 22 Q. Yes, sir, my question is much more limited 23 and I want to see if I can get you out of here. You 24 did make this comment?</p> <p style="text-align: center;">306</p>	<p>1 A. Right. 2 Q. "Few speakers drew any line between the 3 Board's policy on commencement ceremonies or other 4 school events and the policy of prayer said before 5 School Board meetings." 6 A. Right. 7 Q. I want to ask you, would you agree that at 8 times the meeting resembled prayer meeting? 9 A. I don't know that I'd call it a prayer 10 meeting but I would say as I stated to you earlier I 11 don't think a lot of people really understood what 12 the issues were. Like the last sentence says few 13 speakers drew any lines. I think most of the 14 speakers were not aware what we were discussing was 15 a more limited realm. 16 Q. There were choruses of amen -- 17 A. Yes. 18 Q. -- and people? 19 A. Yes. 20 Q. -- cheering for people who expressed 21 support for prayer in schools? 22 A. Yes. Yes I don't know if I would call it a 23 prayer meeting. 24 Q. Revival meeting?</p> <p style="text-align: center;">308</p>

TAB 10

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<p>1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF DELAWARE 3 4 MONA DOBRICH and MARCO DOBRICH, individually 5 As parents and next friend of ALEXANDER DOBRICH, 6 SAMANTHA DOBRICH, JANE DOE and JOHN DOE, 7 individually and as parents and next friend of 8 JORDAN DOE and JAMIE DOE, 9 Plaintiffs 10 vs. Civil Action 11 No. 15-120 12 INDIAN RIVER SCHOOL DISTRICT, ET AL., 13 Defendants 14 15 DEPOSITION OF REGINALD HELMS, taken 16 pursuant to notice at the Indian River School 17 District, 31 Hosler Street, Selbyville, Delaware, 18 beginning at 3:32 p.m. on October 11, 2006 before 19 David A. Sroka, Registered Professional Reporter and 20 Notary Public. 21 22 APPEARANCES: 23 THOMAS ALLINGHAM, ESQUIRE 24 RICHARD HORVATH, ESQUIRE BRIAN LENHARD, ESQUIRE P.O. Box 636 Wilmington, Delaware 19899-0636 For the Plaintiffs WILCOX & FETZER 1330 King Street - Wilmington, DE 19801 (302) 655-0477 www.wilfet.com</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>1 MS. DUPHILY: This is the 2 videotape deposition of Reggie Helms. This 3 deposition is being taken on behalf of the 4 Plaintiff in the matter of Dobrich, et al. 5 versus Indian River School Board, et al, 6 case number 15-120. The deposition is 7 being held at 31 Hosler Boulevard, 8 Selbyville, Delaware. We are going on the 9 record on October 11, 2006 at approximately 10 3:32 p.m. 11 The court reporter is David Sroka 12 with Wilcox & Fetzer, Wilmington, Delaware. 13 my name is Lindsay duPhily and I am the 14 videotape specialist with Discovery Video 15 Services. 16 Counsel will now introduce 17 themselves and then the court reporter will 18 swear in the witness. 19 MR. ALLINGHAM: I'm Tom Allingham 20 for the Plaintiffs and with me are Richard 21 Horvath and Brian Lenhard. 22 MR. GOSSELIN: Jason Gosselin for 23 Indian River School District and the Indian 24 River School Board and the individual board</p> <p>3</p>
<p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>	<p>1 member in attendance. 2 REGINALD HELMS, 3 The Witness herein, called for examination by 4 the Plaintiff, having been duly sworn to tell the 5 truth, the whole truth, and nothing but the truth, 6 was examined and testified as follows: 7 EXAMINATION BY MR. ALLINGHAM: 8 Q. I've put before you the top document is 9 Plaintiffs Exhibit 30. Would you turn to the last 10 page of that exhibit, please? 11 In the second column from the right -- I 12 should give you some background. This is an article 13 from Delaware Beach Life, have you ever read it 14 before? 15 A. No. 16 Q. There is a picture of you on the front 17 page, is that correct? 18 A. That's me. 19 Q. Not the best picture of all time? 20 A. Well -- 21 Q. In the second column from the right there 22 is a quotation from the Reverend Jerry Fike, do you 23 know who Mr. Fike is? 24 A. Yes.</p> <p>2 4</p>

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<p>1 Q. Do you understand that the Rutherford 2 Institute contributed to that process? 3 A. All I can testify is that I sent this to 4 Mr. Walls and as you can see it may have been, I 5 don't know specifically that he did. 6 Q. Well, if you look at the page of the 7 Rutherford Institute and Neuberger memorandum that I 8 was looking at earlier, at the bottom it has one, 9 two and three and on the next page it has four and 10 five? 11 A. Right. 12 Q. You can recognize without comparing it word 13 by word that it's virtually verbatim to the final 14 policy as adopted? 15 A. That's why I'm saying you can see, but do I 16 have knowledge that that's what they based it on, 17 nobody told me that but as you can see. 18 Q. Did the memorandum of the Rutherford 19 Institute and the Neuberger Firm, which constitutes 20 PX34, form part of the consideration that you took 21 into account in voting to adopt Board Policy BDA.1 22 the School Board Prayer Policy? 23 A. Yes. 24 Q. Did any other Board member tell you that it</p> <p style="text-align: center;">109</p>	<p>1 are asking for wisdom and guidance to make good 2 sound decisions. 3 Q. And the means of solemnifying the 4 proceedings specified in the Board policy are two, 5 is that correct? One is to offer a prayer and the 6 other is to offer a moment of silence? 7 A. As I see there are two mentioned, prayer 8 and moment of silence. 9 Q. And am I correct that the Board policy 10 authorizes Board members to open the meeting at the 11 invitation of the Board president and on a rotating 12 basis that's specified here, with the limitations 13 that are specified, in one of two ways and only one 14 of two ways, a prayer or a moment of silence? 15 A. Well, I'll speak to that issue like this. 16 Your definition of a prayer and my definition of a 17 prayer may be two separate things. Therefore, I 18 know that there are some Board members who have 19 opened the meeting with something that they received 20 from the Internet which may be from George 21 Washington or Thomas Jefferson or whatever. There 22 have been some Board members that pray simply as 23 they are led. 24 In other words, there is nothing written,</p> <p style="text-align: center;">111</p>
<p>1 formed an important part of their consideration of 2 the consideration that they took into account in 3 voting for adoption of the Board Prayer Policy? 4 A. No, they didn't, they didn't say that. 5 Q. Look at Exhibit 9, please? 6 A. Okay. 7 Q. And I'm going to ask you Mr. Helms just to 8 take a minutes to read through the policy? 9 A. Sure. 10 Q. Ready? 11 A. Yes. 12 Q. What in your mind was the purpose of 13 offering -- is the purpose of opening the Board's 14 meetings with a prayer or a moment of silence? 15 A. Exactly what it says. 16 Q. To solemnify the proceedings? 17 A. Yes. To me the work that we do is very 18 important. We have the best interests of our 19 students, our staff, and our district and I think 20 any time you enter into important work, if you will, 21 of this nature, that in my way of thinking you 22 should invoke the wisdom and guidance of a higher 23 power, if you will, whatever you see that to be. 24 But I think that this simply says that we</p> <p style="text-align: center;">110</p>	<p>1 it's just something that they do. We've had Board 2 members that have requested a moment of silence. 3 Although there are only two mentioned here I think 4 the leeway is that whatever you feel as an 5 individual that you want to do, then that's what 6 we've been doing. 7 So, although the policy mentions prayer and 8 a moment of silence, there have been other occasions 9 where people have read something from the Internet 10 and simply that is to just like it says here, it's a 11 very important job that we have, we have over 7000 12 students, and staff and whatever. It's a 13 responsibility that I don't take lightly, and for 14 myself I would love to have someone giving me wisdom 15 and guidance and in my case it's my Heavenly Father. 16 Well, in your case it may be something 17 different and some other Board member it maybe a 18 different way. However, that is the intent as I see 19 it. My feeling. 20 Q. Let me ask you a question about whether -- 21 I'm going to give you a hypothetical practice and 22 ask you whether in your judgment it would accord 23 with the policy. I'd like you to imagine a 24 hypothetical Board member who is an atheist. A very</p> <p style="text-align: center;">112</p>

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<p>1 can seek divine guidance for your work as a Board 2 member is by saying a prayer out loud on the stage 3 in the name of Jesus Christ at the Board meeting? 4 A. No, that is not the only way. 5 Q. You could pray for divine guidance off 6 stage in what I guess would be the wings of the 7 stage right before you walk on? 8 A. Well, as I said before you can pray 9 anywhere. 10 Q. Or after you walk on you could offer a 11 silent prayer in your head for divine guidance? 12 A. Sure. 13 Q. You could invite those present with you to 14 join you in a moment of silence as a way of seeking 15 divine guidance, is that correct or not correct? 16 A. Yes, you could do that. 17 Q. And those methods of seeking divine 18 guidance are no more or less effective in your 19 understanding of one's relationship with God, no 20 more or less effective than a public prayer out loud 21 would be? 22 A. As I stated before I think God hears your 23 prayers whether it's openly or privately. And the 24 only thing I would say is that could you do it in</p> <p style="text-align: center;">133</p>	<p>1 most part. 2 Q. And that would include regular meetings and 3 special meetings? 4 A. Yes. 5 Q. And so would you describe for me how you 6 have, if you can recall, how you have asked for 7 divine guidance before special meetings of the 8 Board? 9 A. Typically we receive an agenda, and on that 10 agenda will be certain items, and I just simply ask 11 the Lord to help me make good sound decisions that 12 will be for the good of the district and the staff 13 and the students, and ask his blessings on whatever 14 decisions are made. That type of thing. 15 Q. And that -- because we know that public 16 prayers are not offered at special meetings, that 17 would be a private prayer? 18 A. That would be private, although I would say 19 there have been other meetings besides regular 20 meetings that prayer has been open, the meeting has 21 been started with an open prayer. As a matter of 22 fact, there were several negotiation meetings where 23 I was asked by the association on the other side of 24 the table if I would open the meeting with prayer.</p> <p style="text-align: center;">135</p>
<p>1 the wings, yes, could you do it silently, yes, but 2 as far as I know we're still allowed to do it 3 openly, so if I were to choose to do it openly I 4 hope I would continue to have the right to do so. 5 But God would hear my prayer whether it was 6 silent, whether it was openly, whether it was in my 7 vehicle, or whether I was on stage. God would hear 8 my prayer. 9 Now, how effective the prayer is only He 10 can determine that, but I believe He hears my prayer 11 and answers according to His will, but I think 12 that's why we are here. I'm certainly very hopeful 13 that there doesn't come a time where someone says to 14 me you cannot pray openly. I hope that never 15 happens in this United States. 16 Q. Everyone's memory is not perfect, but would 17 you think it's fair to say that for every single 18 Board meeting that you've attended as a Board member 19 you have asked for God's help in performing your 20 duties at that meeting? 21 A. I would say almost every one, sure. I 22 don't know if it would be -- like I told you 23 yesterday I don't use words like never and all, but 24 I would say that it's safe to say that yes for the</p> <p style="text-align: center;">134</p>	<p>1 So, there have been other meetings besides 2 regular meetings that have been opened with prayer 3 that I have been sitting in on -- 4 Q. Yes -- 5 A. -- but not every one. 6 Q. Yes, sir. I was following up on your 7 testimony and also that of Mr. Bireley and Dr. 8 Hattier, that it is not the practice of the Board to 9 open special meetings with a prayer, and that's 10 correct, isn't it? 11 A. That's correct, although over the years 12 that I've been on there some have, but it would be 13 out of the ordinary. 14 Q. Yes, sir. And so setting aside the out of 15 the ordinary special meetings where someone offered 16 a public prayer, when you asked for divine guidance 17 you did so privately? 18 A. Yes. 19 Q. Let me ask you this, before any special 20 meeting have you ever gotten together with, just 21 said to one or more of your fellow Board members, 22 you know, before we start let's offer up a prayer 23 for guidance? Not as a formal matter, but inside of 24 purely private prayer have you invited someone to</p> <p style="text-align: center;">136</p>

TAB 11

Hobbs, Lois 10/24/2006 4:43:00 PM

<p>FOR THE DISTRICT OF DELAWARE MONA DOBRICH and MARCO) DOBRICH, Individually and) as parents and next friend) of ALEXANDER DOBRICH,) SAMANTHA DOBRICH, JANE DOE) Civil Action and JOHN DOE, Individually) Number 15-120 (JJF) and as parents and next) friend of JORDAN DOE and) JAMIE DOE,) Plaintiffs,) v.) INDIAN RIVER SCHOOL) DISTRICT, et al.,) Defendants.) Videotape deposition of LOIS HOBBS, taken pursuant to notice at 31 Hoosier Street, Selbyville, Delaware, beginning at 9:12 a.m., on October 24, 2006, before Julie H. Parrack, Registered Merit Reporter, Certified Realtime Reporter and Notary Public. APPEARANCES: THOMAS ALLINGHAM, ESQUIRE BRIAN G. LENHARD, ESQUIRE One Rodney Square Wilmington, Delaware 19801 On behalf of Plaintiffs WILCOX & FETZER 1330 King Street - Wilmington, Delaware 19801 (302) 655-0477 www.wilfet.com</p> <p>1</p>	<p>1 defendants. 2 LOIS HOBBS, 3 the deponent herein, having first been duly 4 sworn on oath, was examined and testified as 5 follows: 6 BY MR. ALLINGHAM: 7 Q. Mrs. Hobbs, Ms. Hobbs, which do you prefer? 8 A. Miss, Miss Hobbs. 9 Q. Miss Hobbs, sorry. Have you ever been deposed 10 before? 11 A. Yes. 12 Q. All right, so you know the process. I'm going 13 to ask you some questions. You are -- unless your 14 counsel instructs you not to answer, you're obligated 15 to answer those questions to the best of your ability. 16 I'm almost world renowned for asking questions that 17 are sometimes confusing. Please tell me if you find a 18 question confusing or ambiguous, and I will do my best 19 to fix it. Don't answer a question that you don't 20 feel like you understand. 21 A. Okay. 22 Q. You need to answer, although we have a 23 videographer here, you still need to answer out loud; 24 that is to say, so that the court reporter can take</p> <p>3</p>
<p>1 APPEARANCES (CONT'D): 2 JASON P. GOSSELIN, ESQUIRE DRINKER, BIDDLE & REATH, LLP 3 One Logan Square 4 18th and Cherry Streets Philadelphia, Pennsylvania 19103-6996 On behalf of Defendants 5 6 ALSO PRESENT: TIMOTHY KEARNS LINDSAY DuPHILY, VIDEOGRAPHER 7 ----- 8 THE VIDEOGRAPHER: This is the videotape 9 deposition of Ms. Lois Hobbs taken by the Plaintiff in 10 the matter of Dobrich, et al., versus Indian River 11 School District, et al., Civil Action No. 15-120. The 12 deposition is being held at 31 Hoosier Street, 13 Selbyville, Delaware, on October 24th, 2006. We are 14 going on the record at approximately 9:12 a.m. 15 The court reporter is Julie Parrack from 16 the firm of Wilcox & Fetzer, Wilmington, Delaware. My 17 name is Lindsay DuPhily, and I am the videotape 18 specialist of Discovery Video Services. 19 Counsel will now introduce themselves, and 20 then the court reporter will swear in the witness. 21 MR. ALLINGHAM: My name is Tom Allingham. 22 I represent the plaintiffs. Along with me is Brian 23 Lenhard and Tim Kearns. 24 MR. GOSSELIN: Jason Gosselin for the</p> <p>2</p>	<p>1 down your answer and there's no ambiguity in what you 2 answer is. Nods and "um-hums" can be misinterpreted. 3 A. All right. 4 Q. I understand that you have a previous 5 commitment and that you need to stop at 1:00 this 6 afternoon, correct? 7 A. At 1:30 at the latest. 8 Q. Okay. I think what we'll do then is stop for 9 lunch at 1:00. You can take care of your obligations 10 and if we need to resume thereafter, we will. 11 Is there any -- are you suffering from any 12 condition that would prevent you from giving 13 comprehensive and truthful answers to my questions 14 today? 15 A. No. 16 Q. Or taking any medications that might prohibit 17 you from doing that? 18 A. No, I took a Benadryl, but I don't think that 19 will prohibit. 20 Q. All right, your full name is what? 21 A. Lois Margaret Hobbs. 22 Q. And what is your address? 23 A. It is 3 Brighton Street, Ocean View, Delaware. 24 Q. Are you currently employed?</p> <p>4</p>

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<p>1 THE WITNESS: I don't know how to do it.</p> <p>2 MR. GOSSELIN: I don't know what the</p> <p>3 question is going to be.</p> <p>4 THE WITNESS: I don't know what the</p> <p>5 question is going to be.</p> <p>6 MR. GOSSELIN: But if it involves</p> <p>7 revealing what took place at that August 23rd meeting</p> <p>8 that we talked about before, the instruction is to not</p> <p>9 answer that question.</p> <p>10 THE WITNESS: Okay.</p> <p>11 BY MR. ALLINGHAM:</p> <p>12 Q. And I may have to ask a couple of questions to</p> <p>13 develop the record because of the nature of the</p> <p>14 instruction.</p> <p>15 So my first question is, at any time</p> <p>16 during the Board's consideration of the School Board</p> <p>17 prayer policy, do you recall any Board member saying</p> <p>18 or expressing the view that perhaps the Board should</p> <p>19 consider a moment of silence instead of a prayer?</p> <p>20 A. I think Mr. Isaacs may have said that once.</p> <p>21 Q. And what was the response?</p> <p>22 A. Just that the Board's feeling was they wanted</p> <p>23 to continue the tradition.</p> <p>24 Q. Do you recall during the discussion of the</p> <p style="text-align: center;">197</p>	<p>1 thoughts.</p> <p>2 Q. According to your understanding, Miss Hobbs, is</p> <p>3 the prayer directed only to the individual Board</p> <p>4 members, or is it directed to all of the people in the</p> <p>5 cafeteria or auditorium in which the prayer is being</p> <p>6 offered?</p> <p>7 A. I believe it's the Board members' prayer.</p> <p>8 Q. So it's directed only to the Board members?</p> <p>9 A. I think they sort of clarify it with a</p> <p>10 statement before that says if you don't want to</p> <p>11 participate in the prayer, you may leave the room, or</p> <p>12 whatever that little paragraph says.</p> <p>13 Q. That's the so-called disclaimer?</p> <p>14 A. Yeah, um-hum.</p> <p>15 MR. GOSSELIN: Or "the disclaimer."</p> <p>16 Objection.</p> <p>17 MR. ALLINGHAM: I'm sorry?</p> <p>18 MR. GOSSELIN: Objection to the form.</p> <p>19 MR. ALLINGHAM: It wasn't meant to be</p> <p>20 substantively charged. I thought you'd object if I</p> <p>21 called it the disclaimer.</p> <p>22 BY MR. ALLINGHAM:</p> <p>23 Q. I showed you the actual Board policy, PX 9.</p> <p>24 Would you see if you can get that out again?</p> <p style="text-align: center;">199</p>
<p>1 moment of silence idea one or more Board members</p> <p>2 saying, "I don't want to be told how I can pray," in</p> <p>3 words or substance?</p> <p>4 A. I'm not sure what meeting that would be, but I</p> <p>5 did hear something like that.</p> <p>6 Q. Who said that?</p> <p>7 A. I don't recall who said it.</p> <p>8 Q. What did you understand, if you had an</p> <p>9 understanding, the purpose of the Board policy on</p> <p>10 School Board prayer to be?</p> <p>11 A. That it would be shared, that we wouldn't be</p> <p>12 preaching any one religion to anyone, that it would be</p> <p>13 shared amongst the Board members to say a prayer. If</p> <p>14 they chose a moment of silence, they could choose a</p> <p>15 moment of silence. If they chose a prayer, they could</p> <p>16 choose a prayer. But as a legislative body, it was up</p> <p>17 to that individual who was ever giving the prayer to</p> <p>18 say whatever prayer they wanted.</p> <p>19 And oftentimes I would say to whoever,</p> <p>20 when I heard who was giving the prayer that, you know,</p> <p>21 you know, a teacher died of a brain tumor, a fire of</p> <p>22 the children, so often they would bless that, you</p> <p>23 know, they would say, you're in our thoughts, that</p> <p>24 family, who's ever gone through this tragedy is in our</p> <p style="text-align: center;">198</p>	<p>1 A. Yes.</p> <p>2 Q. Paragraph 1 reads "In order to solemnify its</p> <p>3 proceedings the Board of Education may choose to ope</p> <p>4 its meetings with a prayer or moment of silence, all</p> <p>5 in accord with the freedom of conscience of the</p> <p>6 individual adult Board member."</p> <p>7 Would you agree with me that according to</p> <p>8 the policy, the purpose of the offering of a prayer or</p> <p>9 moment of silence is to solemnify the proceedings?</p> <p>10 A. Yes.</p> <p>11 Q. And what do you understand the solemnification</p> <p>12 of the proceedings to mean? What does that phrase</p> <p>13 mean?</p> <p>14 A. I think they were just trying to bring some</p> <p>15 dignity and, you know, ask for guidance in their</p> <p>16 decision about children.</p> <p>17 Q. Was there any discussion about that at any time</p> <p>18 that you recall?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Was there ever any discussion of the purpose of</p> <p>21 having a prayer to open Board meetings during any of</p> <p>22 the Board's consideration of this Board policy?</p> <p>23 A. I think it's been a tradition they've been</p> <p>24 opening the Board meetings with a prayer.</p> <p style="text-align: center;">200</p>

TAB 12

McCabe, Elaine (Video) 10/17/2006 9:02:00 AM

<p>1 IN THE UNITED STATES DISTRICT COURT 2 IN AND FOR THE DISTRICT OF DELAWARE 3 MONA DOBRICH and MARCO : Case No. 15-120 4 DOBRICH, individually and : 5 as parents and next friend : 6 of ALEXANDER DOBRICH, JANE DOE : 7 and JOHN DOE, individually : 8 and as parents and next : 9 friend of JORDAN DOE and : 10 JAMIE DOE, : 11 Plaintiffs, : 12 v. : 13 INDIAN RIVER SCHOOL : 14 DISTRICT, et al., : 15 Defendants. : 16 Video Deposition of ELAINE MCCABE, taken 17 pursuant to notice, on Tuesday, October 17, 2006 18 at 9:02 a.m. at 31 Hosier Street, Selbyville, 19 Delaware, reported by Lorena J. Hartnett, a Registered 20 Professional Reporter and Notary Public. 21 APPEARANCES: : 22 RICHARD HORVATH, ESQUIRE 23 BRIAN G. LENHARD, ESQUIRE 24 Skadden, Arps, Slate, Meagher & Flom One Rodney Square Wilmington, DE 19801 Attorneys for the Plaintiff WILCOX & FETZER 1330 King Street - Wilmington, DE 19801 (302) 655-0477 www.wilfet.com</p> <p style="text-align: center;">1</p>	<p>1 2 3 TABLE OF CONTENTS 4 TESTIMONY OF ELAINE MCCABE: 5 Direct Examination by Mr. Horvath 4 6 Certificate of Reporter112 7 8 9 10 INDEX TO EXHIBITS 11 Plaintiffs Exhibit 57 99 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">3</p>
<p>1 2 APPEARANCES (CONTINUED): 3 JASON P. GOSSELIN, ESQUIRE 4 Drinker, Biddle & Reath, LLP 5 One Logan Square 6 18th and Cherry Streets 7 Philadelphia, PA 19103-6996 8 Attorney for the Defendants 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">2</p>	<p>1 (The videographer read the 2 introduction, and the attorneys introduced 3 themselves.) 4 ELAINE MCCABE, 5 HAVING FIRST BEEN DULY SWORN, TESTIFIED AS 6 DIRECT EXAMINATION ON BEHALF OF THE PLAIN 7 BY MR. HORVATH: 8 Q. Good morning, Ms. McCabe. 9 A. Good morning. 10 Q. Just so I can be clear from the start, is it 11 Ms. or Mrs.? 12 A. Mrs. 13 Q. Mrs. Have you ever been deposed before? 14 A. Once, yes. 15 Q. And what was that, what were you -- What case 16 was that? 17 A. It was the Barkaski case associated with the 18 school district. 19 Q. And what was the nature of that case? 20 A. It was a case that involved missing monies 21 from a booster organization. 22 Q. Okay, did that case proceed to trial? 23 A. No. 24 Q. Did that case involve in any way religion in</p> <p style="text-align: center;">4</p>

Unsigned

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<p>1 until today?</p> <p>2 A. I frankly didn't know that -- If I knew that</p> <p>3 night, I had forgotten, but I really wasn't aware that</p> <p>4 we were on tape.</p> <p>5 Q. Can we go back to exhibit number nine, the</p> <p>6 copy of the policy?</p> <p>7 A. Uh-huh.</p> <p>8 Q. Is there any -- Which paragraph of this</p> <p>9 policy limits what a board member can say as a part of</p> <p>10 their prayer?</p> <p>11 A. I would say number three.</p> <p>12 Q. Okay. And number three reads, "Such</p> <p>13 opportunity," which I presume means the prayer, "shall</p> <p>14 not be used or exploited to proselytize, advance or</p> <p>15 convert anyone, or to derogate or otherwise disparage</p> <p>16 any particular faith or belief." Is that correct?</p> <p>17 A. Yes.</p> <p>18 Q. What does it mean to proselytize?</p> <p>19 A. I take that to mean that the prayer said</p> <p>20 before board meetings was not meant to try to</p> <p>21 influence anyone to a particular faith.</p> <p>22 Q. And I presume that you would use the same</p> <p>23 definition for the convert anyone?</p> <p>24 A. Right, right.</p> <p style="text-align: center;">73</p>	<p>1 those prayers would be permitted under this policy.</p> <p>2 A. Okay.</p> <p>3 Q. Oh, before I show you these ones, I am going</p> <p>4 to read one to you.</p> <p>5 A. Okay.</p> <p>6 Q. Suppose that a board member gave the</p> <p>7 following prayer: "We pray, Lord, that you enlighten</p> <p>8 the heathen in our midst and that you inspire them to</p> <p>9 come to the knowledge of your wisdom and goodness."</p> <p>10 Would that prayer be appropriate under the</p> <p>11 policy?</p> <p>12 A. I don't know.</p> <p>13 Q. Would it violate paragraph three?</p> <p>14 A. I am not an expert on prayer. Read it again.</p> <p>15 Q. "We pray, Lord, that you enlighten the</p> <p>16 heathen in our midst and that you inspire them to come</p> <p>17 to knowledge of your wisdom and goodness."</p> <p>18 A. I guess I personally probably don't like the</p> <p>19 word heathen, but I don't know whether it would be</p> <p>20 allowed or not.</p> <p>21 Q. Does this prayer proselytize?</p> <p>22 A. I have no idea.</p> <p>23 Q. You voted for Policy BDA.1?</p> <p>24 A. I did.</p> <p style="text-align: center;">75</p>
<p>1 Q. What does the advance, the word advance in</p> <p>2 this policy mean?</p> <p>3 A. To put one faith before another.</p> <p>4 Q. Okay. Have school board prayers identified</p> <p>5 any religious figures, any deities, for example?</p> <p>6 A. God and Jesus.</p> <p>7 Q. Anyone else?</p> <p>8 A. I don't believe so, and not always Jesus.</p> <p>9 Q. But --</p> <p>10 A. Or I would say the Lord, which would be used</p> <p>11 sometimes.</p> <p>12 Q. But you don't remember hearing any school</p> <p>13 board prayer that was directed to Jehovah?</p> <p>14 A. No.</p> <p>15 Q. Or Buddha?</p> <p>16 A. No.</p> <p>17 Q. Or Allah?</p> <p>18 A. No.</p> <p>19 Q. Or I can keep going through all religious</p> <p>20 beings aside from God in general, the Lord and Jesus.</p> <p>21 A. Right.</p> <p>22 Q. I am going to go through a series of prayers.</p> <p>23 A. Okay.</p> <p>24 Q. And I want to see whether or not you think</p> <p style="text-align: center;">74</p>	<p>1 Q. And, as a board member, you are responsible</p> <p>2 for the enforcement of this policy?</p> <p>3 A. Yes, yes.</p> <p>4 Q. So, speaking as someone who voted for the</p> <p>5 policy and was responsible for the enforcement of the</p> <p>6 policy, how would you make a determination as to</p> <p>7 whether or not that prayer would violate paragraph</p> <p>8 three?</p> <p>9 A. Well, I guess, frankly, I had never thought</p> <p>10 of it in terms of a prayer like you just read, because</p> <p>11 that's not generally what the type of prayer that was</p> <p>12 said at our meetings.</p> <p>13 Generally, it was just a prayer asking for</p> <p>14 wisdom to make good decisions for the betterment of</p> <p>15 our district and our children, so I am not sure that</p> <p>16 it ever came up and I ever thought about it in a</p> <p>17 specific term like that.</p> <p>18 I mean I am assuming, the way you read it,</p> <p>19 that the words could be interpreted to encourage</p> <p>20 people who were not religious to become religious, but</p> <p>21 I don't know that that's really the case.</p> <p>22 Q. So you do not feel that this prayer violates</p> <p>23 paragraph three of the policy?</p> <p>24 A. I don't really have a problem with it, no.</p> <p style="text-align: center;">76</p>

TAB 13

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<p>1 IN THE UNITED STATES DISTRICT COURT 2 IN AND FOR THE DISTRICT OF DELAWARE 3 MONA DOBRICH and MARCO : Case No. 15-120 4 DOBRICH, Individually and : 5 as parents and next friend : 6 of ALEXANDER DOBRICH : 7 SAMANTHA DOBRICH, JANE DOE : 8 and JOHN DOE, Individually : 9 and as parents and next : 10 friend of JORDAN DOE and : 11 JAMIE DOE, : 12 Plaintiffs, : 13 v. : 14 INDIAN RIVER SCHOOL : 15 DISTRICT, et al., : 16 Defendants. : 17 Video Deposition of DONNA MITCHELL taken 18 pursuant to notice, on Monday, October 16, 2006 19 at 9:15 a.m. at 31 Hosier Street, Selbyville, 20 Delaware, reported by Lorena J. Harnett, a Registered 21 Professional Reporter and Notary Public. 22 APPEARANCES: : 23 THOMAS ALLINGHAM, ESQUIRE 24 RICHARD HORVATH, ESQUIRE Skadden, Arps, Slate, Meagher & Flom One Rodney Square Wilmington, DE 19801 Attorneys for the Plaintiff WILCOX & FETZER 1330 King Street - Wilmington, DE 19801 (302) 655-0477 www.wilfet.com</p> <p style="text-align: center;">1</p>	<p>1 2 3 TABLE OF CONTENTS 4 TESTIMONY OF DONNA MITCHELL: 5 Direct Examination by Mr. Allingham..... 4 6 Certificate of Reporter171 7 8 9 INDEX TO EXHIBITS 10 Plaintiff's Exhibit 55 67 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">3</p>
<p>1 2 APPEARANCES (CONTINUED): 3 JASON P. GOSSELIN, ESQUIRE 4 Drinker, Biddle & Reath, LLP 5 One Logan Square 6 18th and Cherry Streets 7 Philadelphia, PA 19103-6996 8 Attorney for the Defendants 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: center;">2</p>	<p>1 (The videographer read the 2 introduction, and the attorneys introduced 3 themselves.) 4 DONNA MITCHELL, 5 HAVING FIRST BEEN DULY SWORN, TESTIFIED AS 6 DIRECT EXAMINATION ON BEHALF OF THE PLAIN 7 BY MR. ALLINGHAM: 8 Q. Good morning, Mrs. Mitchell. My name is Tom 9 Allingham. I represent the plaintiffs. Have you ever 10 been deposed before? 11 A. No. 12 Q. I am sure Mr. Gosselin or someone has 13 explained the process to you, but I will, just 14 briefly, I will ask you questions. 15 You are obligated to provide answers unless 16 your counsel instructs you not to answer a question. 17 If you don't understand the question that I ask you or 18 if you would like to have it clarified, it's really up 19 to you. You can say, "Could you say that a different 20 way, I don't understand it," whatever is the problem. 21 If you answer the question, I, at least, will 22 understand that you understood what you were 23 answering, and I think it's likely that the judge and 24 the jury will understand that, as well, so be sure</p> <p style="text-align: center;">4</p>

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<p>1 Q. Some might be intimidated?</p> <p>2 A. Some might.</p> <p>3 Q. Some might not?</p> <p>4 A. That's right.</p> <p>5 Q. A couple of practical questions on the</p> <p>6 rotation in paragraph two. Is it correct that the way</p> <p>7 this rotation is set up, that unless all ten board</p> <p>8 members choose not to exercise the opportunity, every</p> <p>9 board meeting will be opened with a prayer or a momen</p> <p>10 of silence?</p> <p>11 A. Would you repeat that?</p> <p>12 Q. I am going do repeat it in a minute, but</p> <p>13 let's just look at paragraph two first. You will see</p> <p>14 that "if the member," and this is the second sentence</p> <p>15 of the rotation, this is the mechanism of the</p> <p>16 procedure. "If the member chooses not to exercise</p> <p>17 this opportunity, the next member in rotation shall</p> <p>18 have the opportunity."</p> <p>19 And I presume that if that person declined</p> <p>20 that it would go to the next member in the rotation;</p> <p>21 right?</p> <p>22 A. Right.</p> <p>23 Q. So is it correct that the way this is set up,</p> <p>24 that unless all ten members choose not to exercise the</p> <p style="text-align: center;">157</p>	<p>1 vote for prayer and against the ACLU?</p> <p>2 A. Have I ever heard it or read it?</p> <p>3 Q. Yes.</p> <p>4 A. I don't know that I have read it. I know</p> <p>5 that when school board members are interviewed, wher</p> <p>6 they are going through the process of running for an</p> <p>7 election, they are asked questions about where they</p> <p>8 stand on issues, and I have heard two that have been</p> <p>9 supportive, since I have been on there, of the prayer.</p> <p>10 Q. Who are they?</p> <p>11 A. Charlie Bireley and Nina Lou Bunting.</p> <p>12 Q. And did you hear them say in a public setting</p> <p>13 in words or substance, "A vote for me is a vote for</p> <p>14 school board prayer."?</p> <p>15 A. In a what kind of setting?</p> <p>16 Q. In a public setting?</p> <p>17 A. No.</p> <p>18 Q. Have you heard either of them say that in a</p> <p>19 private setting?</p> <p>20 A. No.</p> <p>21 Q. Have you heard any candidate for a seat on</p> <p>22 the school board say, "A vote for me is a vote against</p> <p>23 the ACLU."?</p> <p>24 A. I haven't heard that, no.</p> <p style="text-align: center;">159</p>
<p>1 opportunity, the board will open its meeting with a</p> <p>2 prayer or a moment of silence?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. This follows up on the testimony you</p> <p>5 gave me that if the board members changed the policy</p> <p>6 to provide for the offering of prayer for guidance</p> <p>7 outside of the formal meeting, they would be voted out</p> <p>8 of office.</p> <p>9 Do you believe that anyone could be elected</p> <p>10 to the Board of Education of the Indian River School</p> <p>11 District who publicly opposed opening the school board</p> <p>12 meetings with a prayer?</p> <p>13 A. I suppose it's possible. I don't know.</p> <p>14 Q. We all frequently say things like "All things</p> <p>15 are possible." Do you think it's likely that anyone</p> <p>16 could be elected to the board who publicly opposed</p> <p>17 school board prayer?</p> <p>18 A. I can only speak for the people in my</p> <p>19 district and the people in the community that I know.</p> <p>20 Q. Yes, ma'am.</p> <p>21 A. They would not be.</p> <p>22 Q. Have you ever heard any candidate for the</p> <p>23 school board, whether successful or unsuccessful,</p> <p>24 campaign on the proposition that a vote for them was a</p> <p style="text-align: center;">158</p>	<p>1 Q. Or that, or any candidate campaign on the</p> <p>2 notion that the candidate will stand up to the ACLU?</p> <p>3 A. I can't point to a specific time that I have</p> <p>4 read or actually heard that. The ACLU is not popular</p> <p>5 in this area. That's just a given.</p> <p>6 Q. Why is it a given?</p> <p>7 A. Well, I think many of the people in the</p> <p>8 community feel that the ACLU oftentimes stands for</p> <p>9 things that go against traditional values that they</p> <p>10 hold dear, and that troubles them and worries them.</p> <p>11 Q. What do you mean by traditional values that</p> <p>12 they hold dear?</p> <p>13 A. Like the prayer issue.</p> <p>14 Q. The prayer issue being school board prayer or</p> <p>15 prayer in schools generally?</p> <p>16 A. Prayer issue in general, I believe, including</p> <p>17 the school board prayer.</p> <p>18 Q. Do you understand that this lawsuit is being</p> <p>19 prosecuted by the ACLU?</p> <p>20 A. Yes.</p> <p>21 Q. And do your constituents view the ACLU as</p> <p>22 anti-Christian?</p> <p>23 A. I believe most of them do, yes.</p> <p>24 Q. Do you view the ACLU as anti-Christian?</p> <p style="text-align: center;">160</p>

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<p>1 A. I don't know enough about it to make that 2 determination. I do feel some concern. 3 Q. Do the constituents in your district share 4 your view that this lawsuit is being prosecuted by the 5 ACLU? 6 A. I believe they do. 7 Q. And I think this is the communicative 8 property word. Is it, therefore, the case that your 9 constituents view the defense of this lawsuit as 10 promoting Christian values against the ACLU? 11 A. Would you ask that again? 12 Q. Do your constituents view the defense of this 13 lawsuit by the board and the district, the defense of 14 this lawsuit has a defensive Christian values against 15 the ACLU? 16 A. I believe many of them do. 17 Q. Do you feel that way? 18 A. I am not sure. 19 Q. What's the cause of your uncertainty? 20 A. I am just not sure. I believe the ACLU has 21 good intentions and they believe in what they are 22 doing, but I don't happen to agree with them on this 23 point. I am not sure to what extent. They do go 24 against the values that I hold dear.</p> <p style="text-align: center;">161</p>	<p>1 MR. GOSSELIN: Objection. 2 A. Would you repeat that? 3 Q. Is it your view that a school board member 4 has a First Amendment freedom of speech right to say 5 whatever he or she wants? 6 A. That depends on where it is and what it's 7 about. I believe we all have to have some restraints 8 in some of the areas that we are in. 9 Q. Okay. Can we agree that private citizens 10 have the right under our constitution to worship as 11 they see fit? 12 A. Yes. 13 Q. And do you think there is any difference or 14 limitation on that right that flows from an 15 individual's service as a school board member? 16 A. I feel more responsibility as a school board 17 member. 18 Q. And why is that? 19 A. Because I am representing other people. 20 Q. And -- 21 A. And I have taken an oath to my office to 22 abide by the rules that I am given. 23 Q. And does that responsibility impose any 24 restrictions or limitations on how you can exercise</p> <p style="text-align: center;">163</p>
<p>1 Q. In any case, in your defense of this lawsuit 2 do you believe that you are defending Christian 3 values, setting the ACLU aside? 4 MR. GOSSELIN: Objection. 5 A. I believe that in this lawsuit I am defending 6 our right to do something which is legal, and it just 7 happens to at this point be prayer before school board 8 meetings. 9 Q. Alright, so let me parse that. The subject 10 matter of your defense happens to be something that 11 represents Christian values, but you would defend your 12 practice, as long as it's legal, whether it 13 represented Christian values or not? 14 A. Yes. 15 Q. Is that what you are saying? 16 A. Yes, uh-huh. 17 Q. Okay. So that the answer to my earlier 18 question is yes, you do view the defense of this 19 lawsuit as a defense of Christian values, but that's 20 coincidental? 21 A. Yes. 22 Q. Is it your belief, Mrs. Mitchell, that a 23 school board member has a First Amendment freedom 24 speech right to say whatever he or she wants?</p> <p style="text-align: center;">162</p>	<p>1 your religion while wearing your hat as a school board 2 member? 3 A. Well, I wouldn't proselytize. 4 Q. Whereas as a private citizen you could? 5 A. I may. 6 Q. Any other restrictions? 7 A. I would have to think about that. I really 8 can't think of anything in particular right now. I 9 just feel the responsibility of the office, where I 10 would not have that if I were just a private citizen 11 attending school board meetings. I am more sensitive 12 to others, how they may perceive things. 13 Q. And that sensitivity to perception, do you 14 feel that sensitivity because as a school board member 15 you are serving as a representative government 16 official? 17 A. Yes. 18 Q. The answer to this may be no, but do you have 19 a view, yourself, as to whether your colleagues on the 20 board share that view, that sensitivity that flows 21 from their service as government officials? 22 A. I can't answer for them. 23 MR. ALLINGHAM: Alright, let's go off 24 the record for a minute.</p> <p style="text-align: center;">164</p>